



# SHELBY COUNTY BOARD OF COMMISSIONERS

## COMMITTEE AGENDAS

**Wednesday, July 16, 2008**

07/11/2008 3:16 PM

**[NOTE: All Committee meetings will be held at the Shelby County Administration Building, 160 N. Main Street, 4<sup>th</sup> floor conference room unless otherwise noted]**

### **Wednesday, July 16, 2008**

8:30 a.m.	Committee # 1 -	BUDGET AND FINANCE
8:45 a.m.	Committee #10 -	GENERAL GOVERNMENT
10:35 a.m.	Committee #5 -	LAND USE, PLANNING, TRANSPORTATION & CODES
10:55 a.m.	Committee #2 -	PUBLIC WORKS
11:10 a.m.	Committee #7 -	ECONOMIC DEVELOPMENT & TOURISM
11:15 a.m.	Committee #8 -	COMMUNITY SERVICES
11:30 a.m.	Committee #11 -	CORE CITY, NEIGHBORHOODS & HOUSING
11:35 a.m.	Committee #14 -	DELINQUENT TAX PROPERTY
11:45 a.m.	Committee #6 -	EDUCATION
11:55 a.m.	<b>LUNCH</b>	
12:30 p.m.	Committee #4 -	LAW ENFORCEMENT, FIRE, CORRECTIONS & COURTS
1:20 p.m.	Committee #13 -	AUDIT

### **8:30 a.m. - Committee # 1 - BUDGET AND FINANCE**

1. Resolution creating a Select Committee on Shelby County's finances to evaluate and review funding needs of Shelby County Government and to create strategies to address these changes and needs. Sponsored by Commissioner Deidre Malone and Commissioner Mike Ritz. MAXIMUM 15 MINUTE DISCUSSION

### **8:45 a.m. - Committee # 10 - GENERAL GOVERNMENT**

1. DISCUSSION - Scheduling of committee items and related matters. MAXIMUM 20 MINUTE DISCUSSION
2. Resolution amending Rule 7 of the Commissioners Permanent Rules of Order. Sponsored by Commissioner Joe Ford. (Deferred from 7/7/08) MAXIMUM 5 MINUTE DISCUSSION
3. Resolution approving the County Mayor's nomination of Carolyn C. Hardy for appointment to the Memphis and Shelby County Land Use Control Board. This resolution is sponsored by Commissioner Joe Ford. MAXIMUM 5 MINUTE DISCUSSION

4. Resolution Approving the Mayor's Nomination of John Conroy for appointment to the Shelby County Housing Authority Board Sponsored by Commissioner Joe Ford. MAXIMUM 5 MINUTE DISCUSSION
5. ORDINANCE- FIRST READING - an Ordinance to amend the Shelby County Code of Ordinances, Chapter 2, Article II, Section 2-57 relative to the purchase, sale, or exchange of materials, supplies, commodities, equipment and real estate from, to or with any federal, state or local governmental entity. Sponsored jointly by Commissioners Joe Ford and Mike Carpenter. MAXIMUM 5 MINUTE DISCUSSION
6. Resolution Approving the Shelby County Compensation Policy for FY 2008-2009. This resolution is sponsored by Commissioner Joe Ford. MAXIMUM 5 MINUTE DISCUSSION
7. Resolution by the Board of Commissioners of Shelby County, Tennessee requiring criminal, sex offender, and child support background checks for all nominees to any board, agency, or commission that are appointed and/or confirmed by the Board of County Commissioners. Sponsored by Commissioner Henri E. Brooks. (Deferred from 7/7/08) MAXIMUM 15 MINUTE DISCUSSION
8. Resolution eliminating pay for unused sick leave at retirement for new employees. Sponsored by Commissioner Sidney Chism. (Deferred from 7/7/08) MAXIMUM 10 MINUTE DISCUSSION
9. A resolution to appoint a Judicial Commissioner and set the term of the appointment. Sponsored by Commissioner Joe Ford. (Deferred from 7/7/08) MAXIMUM 10 MINUTE DISCUSSION
10. Resolution to approve an amendment to the contract with Tony Lanigan Moving Services for an additional one year renewal requiring the expenditure of funds in the amount of \$115,000.00 for the furnishing of Drayage services to the Election Commission for voting machines and equipment and this item requires the expenditures of county general funds. Sponsored by Commissioner Deidre Malone. MAXIMUM 10 MINUTE DISCUSSION
11. Resolution amending the contract with Diebold Election Systems, Inc. for the purchase of the Accuvote TSX Voting System and the Electronic Poll Book and the Voter Verifiable Paper Audit Trail approved by resolution 38 adopted on March 13, 2006 to reallocate funds originally appropriated. Sponsored by Commissioner Deidre Malone. MAXIMUM 10 MINUTE DISCUSSION
12. DISCUSSION - Job studies for the Office of Assessor of Property. MAXIMUM 10 MINUTE DISCUSSION



**10:35 a.m. - Committee # 5 - LAND USE, PLANNING, TRANSPORTATION & CODES**

1. CASE NO. S.U.P. 08-207 CC  
 APPLICANT: Global Tower, LLC  
 LOCATION: North side of Independence Road; +/-250 feet east of Woodstock-Cuba Road  
 REQUEST: Special use permit for 195-foot CMCS monopole cell tower  
 RECOMMENDATIONS:  
 Memphis and Shelby County Office of Planning and Development:  
 APPROVAL WITH CONDITIONS  
 Memphis and Shelby County Land Use Control Board:  
 APPROVAL WITH CONDITIONS  
 (Notice of public hearing published in the Daily News on Friday, July 7, 2008).  
 (Recommitted to committee 7/7/08) MAXIMUM 10 MINUTE DISCUSSION
  
2. CASE NO. S.U.P. 08-205 CC  
 APPLICANT: Collierville First Baptist Church  
 LOCATION: West side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road  
 REQUEST: Special Use Permit to allow recreational and sports field lighting  
 RECOMMENDATIONS:  
 Memphis and Shelby County Office of Planning and Development:  
 APPROVAL WITH CONDITIONS  
 Memphis and Shelby County Land Use Control Board:  
 APPROVAL WITH CONDITIONS  
 (No notice of public hearing or notice letters to interested property owners required since there was no opposition at the Land Use Control Board.)  
 MAXIMUM 10 MINUTE DISCUSSION

**10:55 a.m. - Committee # 2 - PUBLIC WORKS**

1. A resolution approving an agreement with the Town of Collierville to treat the wastewater from the Cotton Creek Area. Sponsored by Commissioner Wyatt Bunker. MAXIMUM 5 MINUTE DISCUSSION
  
2. A resolution approving an agreement with Spring Creek Ranch, LLC and an expenditure of funds in the amount of \$98,400.00 for the rights to connect the proposed Cotton Creek Area Sewer system to the Spring Creek Ranch Pump Station for transportation of the wastewater to the Town of Collierville publicly owned treatment works and this item requires an expenditure of County CIP Funds in the amount of \$98,400.00. Sponsored by Commissioner Wyatt Bunker. MAXIMUM 5 MINUTE DISCUSSION

3. A resolution approving an amendment to the contract with AFRAM Corporation in the amount of \$133,112.20 for the design of a low pressure sewer system in the Cotton Creek Area and this item requires an expenditure of County CIP Funds in the amount of \$133,112.20. Sponsored by Commissioner Wyatt Bunker. MAXIMUM 5 MINUTE DISCUSSION

**11:10 a.m. - Committee # 7 - ECONOMIC DEVELOPMENT & TOURISM**

1. Resolution encouraging all entities with the power to issue PILOT benefits to annually report to the Shelby County Board of Commissioners on their actions taken and dates thereof concerning PILOT expirations. Sponsored by Commissioner Mike Ritz. MAXIMUM 5 MINUTE DISCUSSION

**11:15 a.m. - Committee # 8 - COMMUNITY SERVICES**

1. A RESOLUTION approving the fourth addendum to a lease agreement between L & P Building owner, LLC and Delta Commission on Aging d/b/a Aging Commission of the Mid-South to provide office space on the 10th and 9th floors at 2670 Union Avenue Extended, Memphis, TN 38112 from July 1, 2008 – June 30, 2009 and which requires expenditure of state grant funds in the amount \$104,676.48 and federal grant funds in the amount of \$74,257.68. Sponsored by Commissioner Joyce Avery. MAXIMUM 5 MINUTE DISCUSSION
2. A RESOLUTION amending the FY09 budget in the amount of \$84,022 to allow maximum expenditure of funds from the Shelby County Community Services Agency Tornado Emergency funds. This item requires expenditure of funds donated to the general fund in the amount of \$84,022. Sponsored by Commissioner George Flinn. MAXIMUM 5 MINUTE DISCUSSION
3. Resolution amending the contract between the Exchange Club Family Center of Memphis and Shelby County Government in the amount of \$100,000.00 for the provision of domestic violence assessment services for the period July 1, 2008 through June 30, 2009. This item requires expenditure of General Funds in the amount of \$100,000.00. Sponsored by Commissioner George Flinn. MAXIMUM 5 MINUTE DISCUSSION

**11:30 a.m. - Committee # 11 - CORE CITY, NEIGHBORHOODS AND HOUSING**

1. Resolution to amend the definition of the Design Review Committee in the resolution approved June 16, 2008 amending the policies and procedures of the Shelby County Homestead Program pursuant to Chapter 281 of the Public Acts of 1985 and as authorized by the Shelby County Mayor and the Shelby County Board of Commissioners by resolution on October 7, 1985. Sponsored by Commissioner Mike Ritz. MAXIMUM 5 MINUTE DISCUSSION

**11:35 a.m. - Committee # 14 - DELINQUENT TAX PROPERTY**

1. Resolution approving the sale of Fifteen Delinquent Tax Parcels totaling \$41,200.00 from Tax Sale (s) 005, 95.2, 99.05, 0203, 0204, 0205, 0209, and 0304 pursuant to the provisions of TCA 67-5-2507. Sponsored by Commissioner J. W. Gibson, II. MAXIMUM 5 MINUTE DISCUSSION
2. Resolution approving the sale of Six Delinquent Tax Parcels totaling \$20,500.00 from Tax Sale (s) 0203, 0204, and 0305 pursuant to the provisions of TCA 67-5-2507. Sponsored by Commissioner J. W. Gibson, II. MAXIMUM 5 MINUTE DISCUSSION

**11:45 a.m. - Committee # 6 - EDUCATION**

1. Resolution deferring approval of the Shelby County Board of Education Operating Budget for FY2009 as adopted by the Shelby County Board of Education. Sponsored by Commissioner Mike Ritz. MAXIMUM 5 MINUTE DISCUSSION
2. Resolution approving the Shelby County Board of Education Operating Budget for FY 2009 as adopted by the Shelby County Board of Education. Sponsored by Chairman David Lillard. (Deferred from 7/7/08) MAXIMUM 5 MINUTE DISCUSSION

**12:30 p.m. - Committee # 4 - LAW ENFORCEMENT, FIRE, CORRECTIONS & COURTS**

1. Resolution establishing and defining the duties and responsibilities of the Shelby County Criminal Justice Coordinating Council and appointing members to said council. Resolution sponsored by Commissioner Sidney Chism. MAXIMUM 15 MINUTE DISCUSSION
2. Resolution by the Shelby County Board of Commissioners to encourage the elected judges of the Criminal Courts, General Sessions Criminal Courts, and Civil Courts to collaborate with the Shelby County Sheriff to develop alternate court security arrangements that incorporate the use of part-time retired deputy sheriffs. Sponsored by Commissioner Wyatt Bunker. MAXIMUM 15 MINUTE DISCUSSION
3. Resolution approving a contract amendment with Aramark Correctional Services Inc., in the amount of \$683,333.00 for the provision of food services for inmates and staff at the Shelby County Main Jail and Jail East and this item requires expenditure of County General Funds. Sponsored by Commissioner Sidney Chism. MAXIMUM 5 MINUTE DISCUSSION
4. Resolution requesting approval of a contract with the City of Memphis in the FY09 Shelby County Operating Budget in the amount of \$100,000 for outside contracts for the Shelby County District Attorney General's office for the Shelby County Anti-Gang Initiative and the FY07 Project Safe Neighborhoods. This item requires expenditure of Federal Grant Funds in the amount of \$100,000. Sponsored by Commissioner Sidney Chism. MAXIMUM 5 MINUTE DISCUSSION
5. Resolution requesting approval of a budget amendment in the FY09 Shelby County Operating Budget in the amount of \$78,500 for the Shelby County District Attorney General's Office for the Shelby County Anti-Gang Initiative. This item requires expenditure of Federal Grant Funds in the amount of \$78,500. Sponsored by Commissioner Sidney Chism. MAXIMUM 5 MINUTE DISCUSSION
6. Resolution approving contract with Aramark Correctional Services, LLC in an amount not to exceed \$4,150,000.00 for the management and provision of food services for the Division of Corrections and amending the FY09 Corrections Fund Budget. This item requires expenditure of Corrections Funds in the amount of \$4,150,000.00. Sponsored by Commissioner Sidney Chism. MAXIMUM 5 MINUTE DISCUSSION

**1:20 p.m. - Committee # 13 - AUDIT**

1. DISCUSSION - Update on the status of Management Letter from FY 2006 audit.

Item # \_\_\_\_\_

Prepared By: Mike Ritz

Commissioner \_\_\_\_\_

Approved By: \_\_\_\_\_  
County Attorney

**Resolution creating a Select Committee on Shelby County's finances  
to evaluate and review funding needs of Shelby County Government  
and to create strategies to address these changes and needs.  
Sponsored by Commissioner Deidre Malone and Commissioner Mike Ritz.**

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**WHEREAS**, Administrative review and financial assessments have demonstrated that Shelby County Government, as presently functioning and structured with the limited governmental authority from the State of Tennessee, will have difficulty sustaining itself on the resources presently available to it; and

**WHEREAS**, Shelby County has serious long term financial challenges which include, but are not limited to, future years debt service requirements exceeding the current budgeted levels and available resources with seventy percent of the county's operating budget allocated to employee compensation and benefits; and

**WHEREAS**, The Mayor's Administration and the Shelby County Board of Commissioners are recommending that a thorough examination be conducted to determine budgeting and use of all county financial resources and the efficiency with which current services are provided, and estimates of the level of services to our citizens which can be supported in the short and long term.

**WHEREAS**, Shelby County property tax rate is the highest county property tax rate in the State of Tennessee; and

**WHEREAS**, The combined city and county property tax rates in Memphis, Bartlett, Germantown, and Collierville are among the ten highest combined rates in Tennessee; and

**WHEREAS**, It appears that the FY2009 countywide real estate reappraisal to be accomplished by the County Assessor may actually produce total countywide residential property valuations and total countywide non-residential property valuations equal to or less than current valuations established in FY2005; and

**WHEREAS**, The combination of lower property valuations, excessive property tax rates; the increasing required Debt Service for the county's debt; and many other issues challenge the county's fiscal health for the next several years; and

**WHEREAS**, Many citizens, taxpayers, voters, and business leaders of Shelby County do not know or believe Shelby County Government has financial challenges; and

**WHEREAS**, The Administration and the Commission firmly believe that in order for Shelby County Government to maintain and enhance the trust of its citizens, that the process of addressing these aforementioned challenges should be open and transparent, and should include as participants representatives of Shelby County Government, the public at large, the business community, state government and local municipal governments; and

**WHEREAS**, Many businesses (1) have financial officers, accountants, and auditors who have the relevant expertise and experience to review the financial reports and fiscal health of the county; (2) may be willing to allow or assign some of this expertise and experience to such a review; and (3) have never been asked by the Shelby County Mayor and the Chairman of the Shelby County Board of Commissioners to review the county's financial report and to give recommendations to the Shelby County Mayor and Shelby County Board of Commissioners; and

**WHEREAS**, The Administration and the Commission concur on the urgency of an expeditious process to provide the strategic solutions required in order to obtain funding to sustain the services for the current and future needs of our citizens; and

**WHEREAS,** It is the intent of the Administration and the Commission that the Committee not merely study current budgets and policies and available resources, but present detailed findings and firm recommendations for actions to be taken to ensure that Shelby County Government is operating with the highest level of practical efficiency and if it determines that Shelby County Government should cease providing or funding certain services to so recommend such action; and

**WHEREAS,** The Administration and the Commission recognize that after the above inquiries are addressed, it may be found that Shelby County Government needs new revenue and if so, the Committee shall so recommend and identify with specificity the sources of said revenue.

**NOW THEREFORE BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE BE IT FURTHER RESOLVED,** That there is unanimous support for the creation of a Select Committee on Shelby County's finances to review and evaluate Shelby County's financial and budgetary affairs to make recommendations to the Shelby County Board of Commissioners concerning budget and policy changes and funding needs of Shelby County Government and to review strategies to address these needs, and that the Select Committee is hereby established.

**BE IT FURTHER RESOLVED** That the Select Committee review the financial reports, budgeting process, and fiscal health of Shelby County and make recommendation to the Shelby County Mayor and the Shelby County Board of Commissioners on a periodic basis.

**BE IT FURTHER RESOLVED** That said Select Committee will be charged with the evaluation and analysis of the sustainability of current revenue options, priority and efficiency with regard to government services, and will determine the needs and develop a strategic plan for implementation to address these needs and will review specific county operations areas as detailed on Exhibit A, and other areas as it sees fit.

**BE IT FURTHER RESOLVED** That the County Mayor and Chairman of the Shelby County Board of Commissioners will appoint the Select Committee which shall consist of not more than twenty-one (21) members, with said members being selected from the following:

- 1) Shelby County Government Administration (no more than 2)
- 2) Shelby County Commission (no more than 2)
- 3) The Local Business Community or organization speaking for or representing that community, such as Memphis Tomorrow, (at least half of the total membership)
- 4) The Shelby County Legislative Delegation (no more than 2)
- 5) Tennessee County Services Association (no more than 1)
- 6) Local Municipal Governments (no more than 2)

**BE IT FURTHER RESOLVED** That time is of the essence and it is the desire that this Committee undertake its work with dispatch and deliver its findings in like manner, and that the Committee shall be constituted and begin its work no later than 30 days following the signing of this Resolution and to submit its initial findings and recommendations to the Mayor and Commission not later than 120 days following its first meeting.

**BE IT FURTHER RESOLVED** That the Administration and the Commission staff are authorized and directed to provide the Committee the reasonable and prudent support and supplies needed to carry out its assignment in the manner set forth herein.

\_\_\_\_\_  
A C Wharton, Jr. County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

Exhibit A

Matters to be Considered by the Revenue Advisory  
Committee

1. Construction and financing of City and County Schools
2. Maintenance of school systems real property.
3. Other Post Employment Retirement Benefits of Shelby county and the Memphis and Shelby County School Systems.
4. Continuation of contract with the State of Tennessee regarding state prisoners at the Correction Center.
5. Opportunities to merge offices within Shelby County Government or with other local governments
6. Capital Improvements process, programs, financing and debt service management
7. County Retirement System and whether or not a Plan "D:" with defined contributions be established.
8. The Five Year Strategic Plan Update FY 2008 through FY 2012.

Item #: \_\_\_\_\_

Prepared By: Steve Summerall

Approved By: Brian Kuhn  
County Attorney

RESOLUTION AMENDING RULE 7 OF THE COMMISSIONERS  
PERMANENT RULES OF ORDER. SPONSORED BY COMMISSIONER  
JOE FORD.

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WHEREAS, In an effort to maintain the regular schedule of Committees of the Shelby County Commission in a timely manner, there is a need to incorporate a procedure of coordinating committees that overlap with one another; and

WHEREAS, It is also appropriate to establish a rule in the Commissioners Permanent Rules of Order by the addition of Rule 7(c)(viii).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the following amendment to the Commissioners Permanent Rules of Order is hereby adopted and approved:

Rule 7(c) is amended to add a new subsection (viii) thereto which states as follows:

“If a committee meeting exceeds its regularly scheduled time by fifteen (15) minutes or more, then the committee chairman must get permission from the chairman of the next scheduled committee to continue the meeting for any length of time. If it is necessary for the original committee meeting to continue and the following chairman of the next meeting also need to start his or her committee, then the chairman of the original committee can recess and continue it’s meeting in the 1<sup>st</sup> floor Commission Chamber.”

BE IT FURTHER RESOLVED, That the foregoing amendments shall be effective upon enactment of this Resolution.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Deputy Clerk of County Commission

ADOPTED: \_\_\_\_\_



ITEM# \_\_\_\_\_

PREPARED BY: Lois Riseling

APPROVED BY: Christy L. Kinard  
Assistant County Attorney

**RESOLUTION APPROVING THE COUNTY MAYOR'S NOMINATION OF  
CAROLYN C. HARDY FOR APPOINTMENT TO THE MEMPHIS AND  
SHELBY COUNTY LAND USE CONTROL BOARD. THIS  
RESOLUTION IS SPONSORED BY COMMISSIONER JOE FORD.**

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**WHEREAS**, Pursuant to the rules and regulations governing the members of the Memphis and Shelby County Land Use Control Board, in written correspondence to the Chairman of the Shelby County Board of Commissioners dated June 11, 2008, the County Mayor nominated Carolyn C. Hardy for appointment to the board; and

**WHEREAS**, The ratification and approval by the Shelby County Board of Commissioners is required; and

**WHEREAS**, The members of the Memphis and Shelby County Land Use Control Board are appointed for a term of three (3) years upon approval by the Shelby County Board of Commissioners or until the appointment of their successors; and

**WHEREAS**, Carolyn C. Hardy will be filling a term that has expired, but has not been filled until now, the term of service beginning upon Commission approval and expiring on December 31, 2009.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That the appointment of Carolyn C. Hardy to the Memphis and Shelby County Land Use Control Board for the term as listed above is with this Resolution confirmed by the Shelby County Board of Commissioners.

**BE IT FURTHER RESOLVED**, That this Resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk, County Commission

ADOPTED \_\_\_\_\_



# Shelby County Government

A C Wharton, Jr.  
Mayor

June 11, 2008

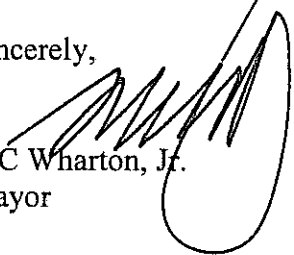
The Honorable David Lillard  
Chairman, Shelby County Board of Commissioners  
160 N. Main, Suite 450  
Memphis, TN 38103

Dear Chairman Lillard:

Pursuant to the rules and regulations governing the Memphis and Shelby County Land Use Control Board, I hereby nominate Carolyn C. Hardy for appointment. Term of Service shall begin upon Commission approval and will expire December 31, 2009.

For your use, biographical information is attached and approval of the Board of Commissioners will be appreciated.

Sincerely,

  
A C Wharton, Jr.  
Mayor

ACW/lar

Enclosure

## **SUMMARY**

### **I. Description of Item**

**This resolution appoints Carolyn C. Hardy to the Memphis and Shelby Land Use Control Board.**

### **II. Source and Amount of Funding**

### **III. Contract Items**

**A. Type of Contract – N/A**

**B. Terms – N/A**

### **IV. Additional Information Relevant to Approval of this Item**

**The Memphis and Shelby County Land Use Control members are appointed for terms of three (3) years each. Carolyn C. Hardy is filling the expired term of Eugene Gibson and the term will expire 12/31/2009.**

Board/Commission

Division of County Government

Name: Carolyn C. Hardy

Date of Birth July 25, 1954 Race Black M XX F

Business Name: Chism Hardy Enterprises, LLC (a/k/a Hardy Bottling Company)

Business Address: 5151 E. Raines Road Zip: 38118 Phone: 901-261-5222

E-mail Carolyn.hardy@hardybottling.com Fax: 901-261-5290

Education: MBA University of Memphis, CPA

Name of Spouse: Marino C. Hardy Number of Children: 3

Home Address: 9412 Forest Station Cove Zip: 38017 Phone: 901-756-1861

Resident of Shelby County 53 years.

List any affiliation or ownership interest you have in any business, corporation, or partnership, and if such business contracts with or sells products or services to Shelby County Government.

None

List members of family, where employed, and whether or not their employer contracts with or sells products or services to Shelby County Government.

Marino Hardy, Klinke Brothers Ice Cream, spouse, no contract with Shelby County Government

Jennifer Hardy, daughter, Aldi Foods- no contract with Shelby County Government

  
Signature

9-Jun-08

Date

(For Office Use Only)

Attendance Record (if applicable)

No. of Meetings  No. Attend  No. Absent

Disposition:

Approval  Resolution  Item#

4/2/2008

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Board/Commission

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**NOTICE TO ALL PROSPECTIVE APPOINTEES TO SHELBY COUNTY BOARDS,  
AUTHORITIES OR COMMISSIONS**

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Pursuant to Resolution #26 adopted July 26, 1993, as amended, each person who submits his or her name for nomination to serve on a board, authority, or commission subject to approval by the Shelby County Board of Commissioners shall submit a list of all private county, social, athletic or professional clubs of which that person is a member. In the event it is determined that any such clubs are discriminatory in choosing their members on the basis of race, sex, or religion, the Shelby County Board of Commissioners may use this information in voting to reject the nominee.

Pursuant to the aforementioned Resolution you are hereby required to list all private county, social, athletic or professional clubs of which you belong.

- 1 NONE
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_
- 4 \_\_\_\_\_
- 5 \_\_\_\_\_
- 6 \_\_\_\_\_
- 7 \_\_\_\_\_
- 8 \_\_\_\_\_

List below any of the aforementioned clubs of which you belong that do not have female members.

- 1 NONE
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_
- 4 \_\_\_\_\_

1/23/2002

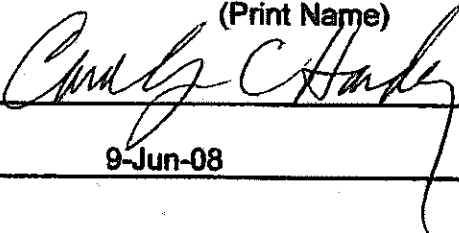
4/2/2008

List below any of the aforementioned clubs of which you belong that do not have minority group members (e.g., African American, Hispanic, Asian).

- 1 None
- 2
- 3
- 4

Do any of the aforementioned clubs of which you belong discriminate in selecting members based on race, sex, or religion?

Circle Below:  
Yes No

Submitted: Carolyn C. Hardy  
(Print Name)  
Signature:   
Date: 9-Jun-08

**CAROLYN C. HARDY**  
9412 Forest Station Cove  
Collierville, Tennessee 38017  
(901) 756-1861 - Home • (901) 261-5200 – Office

## **PROFESSIONAL EXPERIENCE**

- Carolyn Hardy is President/CEO of Chism Hardy Enterprises, LLC (a/k/a Hardy Bottling Company). She is the founder and owner of a major beverage manufacturing and distribution company which is the largest minority women owned contract manufacturer in the US with 2007 sales of \$10 million in the first year of operations and 2008 projected sales of over \$20 million dollars. Hardy's customers include Coors, Coke USA, Arizona, Cott, Jones Soda, Rockstar and many others.
- February, 2001 to August 2006 Vice President Memphis Operations/General Manager Coors Brewing Company responsible for total supply chain supporting gross sales of over \$500 million dollars annually with 650 employees, coordinating procurement, manufacturing, logistics/warehousing/distribution (operations for the southeast US handling 1500 trucks/weekly) for both domestic and international markets.
  - February, 2001 to February 2003, lead the \$90 million upgrade of the Memphis Coors facility brewing modernization.
- February, 1998 to Feb 2001 Honeywell-POMS Corporation as Vice President of Services P/L responsible for all MES/CMS implementations in the United States.
- 1994 to January, 1999 J. M. Smucker Company, Memphis, Tennessee plant manager of the second largest of 12 manufacturing plants. Her accomplishments includes operating lowest cost jam manufacturing plant in the US and successfully decertification of the teamsters union. In addition, during her career held such positions as Human Resources Manager, Quality Control Manager, and Division Controller.

## **EDUCATION/Certification**

Memphis State University, Memphis, Tennessee MBA, Management and BBA, Accountancy  
Certified Public Accountant

## **AWARDS**

She has been recognized by numerous organizations such as 2008 Trumpet Awards High Heels in High Places, University of Memphis 2007 Entrepreneur of the Year, MED Week 2007 New Business of the Year, 2007 Legend for Economics by 100 Black Women, 2006 Grace Woman of Excellence, 2006 New Business of the Year by Black Business Association and Recipient of Boys and Girls Club Young Executive of the Year.

## **COMMUNITY ACTIVITIES**

• Memphis Manufacturer's Association Council • Goals for Memphis - Board Member • Memphis Food Bank - Board Member • Women's Foundation - Board Member • Christian Brother College - Board Member • Memphis Chamber of Commerce Labor Workforce Investment - Board Member • Industrial Development Board- Director • United Way of Memphis - Board Member • Wolf River Conservatory • Tennessee Chamber of Commerce-Board Member • Memphis Regional Chamber of Commerce

**CAROLYN C. HARDY**  
9412 Forest Station Cove  
Collierville, Tennessee 38017  
(901) 756-1861 - Home • (901) 261-5200 – Office

## **SUMMARY**

A versatile senior operational professional with progressively responsible positions in the food manufacturing industry. A dynamic leader with a proven history of performance, innovation, successful project management and employee relations skills. Strong background in:

- P & L Management
- Finance and Accounting
- MES Systems
- Successful Management in Union and Union-free Environments
- Strong Labor Relations Background
- Formal Continuous Improvement Approach
- Proactive Safety Systems including Safety Culture
- Coors Quality Mgmt System including ISO 9000 cert.

## **PROFESSIONAL EXPERIENCE**

### **Chism Hardy Enterprises, LLC**

**September, 2006 to Present**

President/CEO and owner of a major beverage manufacturing and distribution company. The new company Hardy Bottling Company is one of the largest minority women owned contract manufacturer in the US.

### **Coors Brewing Company**

**February, 2001 to August 2006**

**Vice President Memphis Operations/Plant Manager**

**Primary Responsibilities include:**

- General Manager responsible for gross sales over \$500 million dollars annually
- Manufacturing Operations which includes 8 packaging lines, 32 acres under roof
- Logistics/Warehousing/Distribution operations for the southeast US, handling 1000 trucks/weekly
- Customer Service for international market ( approximately 40% of capacity)
- Brewing Operations with 4 million barrel capacity
- IT organization which includes MES using delta V, Modicon and SAP
- 11 Direct Reports (managers and directors)
- 650 employees, re-engineered to 410 (excluding temporaries and contractors).
- Annual operating budget \$80 million and capital budget of \$10 million (2001 \$70 million dollar plant modernization complete in early 2003)

**Key accomplishments**

- Reduced workforce from 650 to 410 in 4 years while increasing volume 10%; net productivity gain of over 40% using world class principles in a flat beer market
- Optimized the operations by implementing World Class principles, Safety Culture and Reliability Centered Maintenance programs
- Successful waste reduction initiative from \$1.70 (2001) to \$1.00 (2005) or 40% reduction
- Best safety record in 4 years, with a 90% reduction in loss time accidents
- Employee engagement scores equaling (exceeding non-union sites) with unionized workforce
- Contractual issues plague Coors during the first 10 years solved during the last 4 years
- Built a strong leadership team embracing 'out of the box thinking', accountability and operator ownership
- Customer service best in many years using radio frequency and new ERP application (Cornerstone)
- Expanded MES to remove paperwork from packaging floor

:

### **Honeywell-POMS Corporation,**

**February, 1998 to Feb 2001**

Vice President of Services P/L responsible for all MES/CMS implementations in the United States. Direct reports included 4 Directors with responsibility for design and implementation of MES applications. Key responsibilities include the following;

- Profit and lost responsibility for U. S. Services
- Development of strategic and tactical plans
- Develop and manage business process to insure consistency and best practices



- Turned around service; thereby maximizing customer satisfaction
- Develop competitive programs to insure employee satisfaction i.e. compensation, training, communications etc

Practice Director for US Clinical and Consumer Package Goods (CPG) Organizations—Responsible coordinating implementation of all Clinical and CPG MES projects. This includes the following activities:

- Hire team members
- Managing Project Managers
- Manage Practice P/L
- Develop project cost estimate
- Perform Operational Assessments
- Insure Customer Satisfaction

## **J. M. SMUCKER COMPANY, Memphis, Tennessee**

### **Career Progress:**

Plant Manager, 1994 to January, 1999  
 Human Resources Manager, 1992 to 1994  
 Quality Control Manager, 1988 to 1992  
 Plant Controller/Plant Accountant

### **Plant Manager**

Provide full P&L management and operational direction to 155 employees including seven department managers. Annual sales exceed \$70 million dollars.

- Reduced plant overhead cost by 30% since 1994.
- Plant achieved 355 days without a lost time accident, best record in plant's 28-year history, with a savings of \$500,000 per year.
- Re-engineered direct and indirect labor to achieve 30% cost reduction.
- Upgraded plant recruiting, resulting in 20% performance improvement.
- Successfully converted plant from a 2-shift to a 3-shift operation - the first in the company.
- Implemented operator equipment changeover improving manufacturing flexibility by 50%.
- Worked closely with consulting group to develop enterprise wide plant shutdown plan

### **Human Resources Manager**

- Developed employee handbook to ensure consistent labor relations in a non-union environment.
- Implemented the Memphis Plant's first transitional duty (light duty) program to reduce worker compensation costs.
- Successfully worked with employees and the company to de-certify the teamsters union.
- Re-engineered clerical work force to achieve a 25% reduction.

### **Quality Control Manager**

- Developed programs and systems to ensure production of high quality products in the most cost-efficient manner.
- Project leader in the development and implementation of MES system at the Memphis Plant.
- Consumer complaint record progressed from third in 1988 to first place in 1989 to promotion
- Quality rework and waste improved by 90%.
- Introduced Smucker Quality Management (SQM) to employees and expanded employee Engagement to assume both quality and USDA responsibilities
- Successfully eliminated USDA Inspection Services.
- Managed plant sanitation department.

### **Plant Controller**

- Transitioned the Memphis Plant to the profitability accounting system.
- Developed and managed plant cost systems, cost center budgets and capital budgets.
- Managed payroll, inventory control, credit, accounts payable and IT functions.
- Coordinated employee insurance benefits and workers compensations.

## **EDUCATION**

**Memphis State University, Memphis, Tennessee**

MBA, Management 1987

Certified Public Accountant

BBA, Accountancy

## **COMMUNITY ACTIVITIES**

- Memphis Manufacturer's Association Council
- Memphis Food Bank - Board Member
- Christian Brother College - Board Member
- Labor Workforce Investment - Board Member
- United Way of Memphis - Board Member
- Tennessee Chamber of Commerce-Board Member
- Goals for Memphis - Board Member
- Women's Foundation - Board Member
- Memphis Chamber of Commerce
- Industrial Development Board- Director
- Wolf River Conservatory
- Junior Achievement

## **SUMMARY**

### **I. Description of Item**

This resolution appoints John Conroy to the Shelby County Housing Authority Board for a three year term beginning July 15, 2008. Mr. Conroy's appointment will fill a vacancy created by the resignation of Hughley Moore. Shelby County Housing Authority Board is operated as unit of the federal government's Department Housing and Urban Development. The Shelby County Housing Authority consists of two properties Kefauver Terrace and Horton Gardens. The Executive Director of the Housing Authority reports to the board and implements the policies and guidelines for the Housing Authority as adopted by the Housing Authority board and as authorized by the Department of Housing and Urban Development of the federal government.

The Housing Authority Board membership consists of 5 members. If approved, this appointment would be the first for Mr. Conroy to the Shelby County Housing Authority.

### **II. Source and Amount of Funding**

N/A

### **III. Contract Items**

N/A

### **IV. Additional Information Relevant to Approval of this Item**

Administration recommends approval of this Resolution.

Item\_\_\_\_\_

Prepared by Grace Hutchinson

Commissioner Ford

Approved by \_\_\_\_\_

**RESOLUTION APPROVING THE COUNTY MAYOR’S NOMINATION OF JOHN CONROY FOR APPOINTMENT TO THE SHELBY COUNTY HOUSING AUTHORITY BOARD SPONSORED BY COMISSIONER JOE FORD**

---

**WHEREAS,** Pursuant to the rules and regulations governing the membership of the Shelby County Housing Authority, the Mayor requests the approval of the appointment of John Conroy to the Shelby County Housing Authority for a term of three years; and

**WHEREAS,** The Shelby Housing Authority is a unit of the federal government’s Department of Housing and Urban Development Public Housing Authority network; and

**WHEREAS,** Appointments to this board as recommended by the Mayor require approval by the Shelby County Board of Commissioners.

**WHEREAS,** The Mayor desires at this time to appoint John Conroy to the Shelby County Housing Authority Board for a three year term commencing on July 15, 2008 and seeks commission approval of this appointment.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That John Conroy is hereby appointed for a three year term to the Shelby County Housing Authority Board commencing on July 15,2008 and expiring on July 15, 2011.

**BE IT FURTHER RESOLVED,** That said appointment will become effective with the adoption of this resolution by the Shelby County Board of Commissioners.

\_\_\_\_\_  
A C Wharton, Jr., Mayor

Date:\_\_\_\_\_

ATTEST:\_\_\_\_\_

\_\_\_\_\_  
Clerk of County Commission

ADOPTED:\_\_\_\_\_

*Shelby County Housing Authority*  
Board/Commission

---

**NOTICE TO ALL PROSPECTIVE APPOINTEES TO SHELBY COUNTY BOARDS,  
AUTHORITIES OR COMMISSIONS**

---

Pursuant to Resolution #26 adopted July 26, 1993, as amended, each person who submits his or her name for nomination to serve on a board, authority, or commission subject to approval by the Shelby County Board of Commissioners shall submit a list of all private country, social, athletic or professional clubs of which that person is a member. In the event it is determined that any such clubs are discriminatory in choosing their members on the basis of race, sex, or religion, the Shelby County Board of Commissioners may use this information in voting to reject the nominee.

Pursuant to the aforementioned Resolution you are hereby required to list all private country, social, athletic or professional clubs of which you belong.

1	_____
2	_____
3	_____
4	_____
5	_____
6	_____
7	_____
8	_____

List below any of the aforementioned clubs of which you belong that do not have female members.

1	_____
2	_____
3	_____
4	_____

06/24/2008 14:28 9015454487

SUPPORTSERVICES

PAGE 02/05

Shelby County Housing Authority  
Board/Commission

Division of County Government

Name:

John Conroy

Date of Birth

April 2, 1943

Race

Caucasian

M

☒

F

Business Name:

Riverfront Development Corporation

Business Address:

22 N. Front St, Suite 900  
Memphis 38103Zip: 38103Phone: 901-312-7190

E-mail

john.conroy@memphisriverfront.com

Fax

901-312-7189

Education:

Masters in Public Administration - Miss. State Univ.

Name of Spouse:

Emma Conroy

Number of Children:

5

Home Address:

6335 W. Forked River Cv.  
Bartlett, TNZip: 38135Phone: 901-388-1378Resident of Shelby County 28 years.

List any affiliation or ownership interest you have in any business, corporation, or partnership, and if such business contracts with or sells products or services to Shelby County Government.

None

List members of family, where employed, and whether or not their employer contracts with or sells products or services to Shelby County Government.

None

John Conroy  
Signature  
6/24/08  
Date

(For Office Use Only)

Attendance Record (if applicable)

No. of Meetings

No. Attend

No. Absent

Disposition:

Approval

Resolution

Item#

4/2/2008

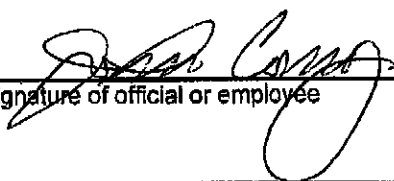
Section 3

## SHELBY COUNTY CODE OF ETHICS CONFLICT OF INTEREST DISCLOSURE STATEMENT

### Shelby County Ethics Commission

**INSTRUCTIONS:** This form is for reporting personal interests required to be disclosed under Section 3 of the code of ethics. Officials, Employees, and Appointees are required to disclose Personal Interests in matters that affect or would lead a reasonable person to infer that it would affect the exercise of discretion of an official or employee.

1. Date of disclosure: 6/24/08
2. Name of official or employee: John Conroy
3. Office and position: Shelby County Hearing Authority
4. Description of personal interest (describe below in detail):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

 6/24/08  
Signature of official or employee Date

\_\_\_\_\_  
Witness Signature Date

A copy of your completed form will be placed on the Shelby County Internet website.

06/24/2008 14:28 9015454487

SUPPORTSERVICES

PAGE 04/05

List below any of the aforementioned clubs of which you belong that do not have minority group members (e.g., African American, Hispanic, Asian).

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

Do any of the aforementioned clubs of which you belong discriminate in selecting members based on race, sex, or religion?

Circle Below:

Yes ☒ No

Submitted:

John Conroy

(Print Name)

Signature:

John Conroy

Date:

6/24/08





# Shelby County Government

A C Wharton, Jr.  
Mayor

June 25, 2008

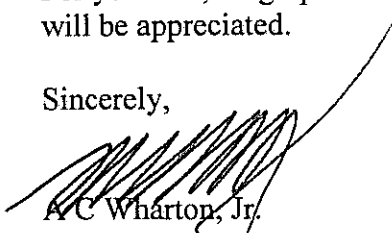
The Honorable David Lillard  
Chairman, Shelby County Board of Commissioners  
160 N. Main, Suite 450  
Memphis, TN 38103

Dear Chairman Lillard:

Pursuant to the rules and regulations governing the Shelby County Housing Authority, I hereby nominate John Conroy for appointment to fill the vacancy created by the resignation of Hughley Moore. Term of Service shall begin July 15, 2008 and will expire July 15, 2011.

For your use, biographical information is attached and approval of the Board of Commissioners will be appreciated.

Sincerely,



A C Wharton, Jr.  
Mayor

ACW/lar

Enclosure

Item \_\_\_\_\_

Prepared by: Bill Goss  
Real Estate Manager

Approved by: Christy Kinard  
Assistant County Attorney

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE SHELBY COUNTY CODE OF ORDINANCES, CHAPTER 2, ARTICLE II, SECTION 2-57 RELATIVE TO THE PURCHASE, SALE OR EXCHANGE OF MATERIALS, SUPPLIES, COMMODITIES, EQUIPMENT AND REAL ESTATE FROM, TO OR WITH ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY. SPONSORED JOINTLY BY COMMISSIONERS JOE FORD AND MIKE CARPENTER.**

---

**WHEREAS**, By codification of the Restructure Act of 1974, upon becoming a charter form of government effective September 1, 1986, Shelby County Government is authorized to purchase, sell, or exchange materials, supplies, commodities, equipment and real estate from, to or with any federal, state or local government or office without conforming with competitive bidding requirements, provided the transaction is based upon the fair market value of the property being purchased, sold or exchanged; and

**WHEREAS**, Shelby County Government can make any order for the disposition of its property pursuant to Tenn. Code Ann. § 5-7-101; and

**WHEREAS**, In an effort to defray the costs to local governmental entities providing educational services throughout Shelby County, Section 2-57(b)(10)(b) of the Shelby County Code of Ordinances was amended by Ordinance No. 325, adopted by the Shelby County Board of Commissioners on April 9, 2007, so as to authorize the transfer of such property to a local governmental entity by donation for educational purposes, provided, however, that such governmental entity is in compliance, or becomes compliant prior to acceptance of any such donation, with all antidiscrimination laws, including, but not limited to, Titles VI and VII of the Civil Rights Act of 1964; and

**WHEREAS**, Shelby County Government, from time to time, is also called upon to donate certain rights, title or interest in real and/or personal property to a federal, Tennessee state, or local government or office for a public purpose that would directly or indirectly benefit the citizens of Shelby County including, but not limited to, the use of such property rights, title or interest for public infrastructure improvements such as roadways, waterways, public service facilities, recreational facilities, conservation areas, flood control areas, wetland mitigation areas,

environmental remediation, sanitary sewer facilities, storm water facilities, utility facilities, communications facilities, and pipelines; or as a match towards federal or state grants for such public infrastructure improvements.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE THAT,** Chapter 2, Article II, Section 2-57(b)(10)(b) of the Shelby County Code of Ordinances be and the same is hereby amended by adding the following to the end of the last sentence in that section: “or the transfer of any right, title or interest in real and/or personal property by donation to a federal, Tennessee state, or local governmental entity for any public purpose found by Shelby County Government to be directly or indirectly beneficial to the citizens of Shelby County, including, but not limited to, public infrastructure improvements.”

**BE IT FURTHER ORDAINED,** That this ordinance shall take effect pursuant to the Shelby County Charter and become effective as provided by law.

\_\_\_\_\_  
Chairman of County Commission

\_\_\_\_\_  
A C Wharton, Jr.  
Shelby County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

ADOPTED THIRD READING: \_\_\_\_\_

## SUMMARY SHEET

### I. Description of Item

An Ordinance to amend the Shelby County Code of Ordinances, Chapter 2, Article II, Section 2-57, authorizing the County's purchase, sell, or exchange of materials, supplies, commodities, equipment and real estate from, to or with any federal, state or local governmental entity, to enable the County to transfer any right, title or interest in real and/or personal property by donation to a federal, Tennessee state, or local government entity for any public purpose found by Shelby County Government to be directly or indirectly beneficial to the citizens of Shelby County, including, but not limited to, public infrastructure improvements.

The last amendment to Section 2-57(b)(10)(b) of the Shelby County Code of Ordinances was approved by Ordinance No. 325, adopted by the Shelby County Board of Commissioners on April 9, 2007, in an effort to defray the costs to local governmental entities providing educational services throughout Shelby County, which authorized the transfer of such property to a local governmental entity by donation for educational purposes, provided, however, that such governmental entity is in compliance, or becomes compliant prior to acceptance of any such donation, with all antidiscrimination laws, including, but not limited to, Titles VI and VII of the Civil Rights Act of 1964. The need for this 2007 amendment was necessary to allow the County to donate real and/or personal property, such as the Kate Bond park property, for use in expanding its public school facilities.

The Ordinance now before you to amend Section 2-57(b)(10)(b) of the Shelby County Code of Ordinances is necessary because from time to time, the County is also called upon to donate certain rights, title or interest in real and/or personal property to a federal, Tennessee state, or local government or office for a public purpose, that may not necessarily be for education, that would directly or indirectly benefit the citizens of Shelby County including, but not limited to, the use of such property rights, title or interest for public infrastructure improvements such as roadways, waterways, public service facilities, recreational facilities, conservation areas, flood control areas, wetland mitigation areas, environmental remediation, sanitary sewer facilities, storm water facilities, utility facilities, communications facilities, and pipelines; or as a match towards federal or state grants for such public infrastructure improvements.

### II. Source and Amount of Funding

- A. Amount Expended/Budget Line Item  
NONE
- B. All Costs (Direct/Indirect)  
NONE
- C. Additional or Subsequent Obligations or Expenses of Shelby County  
NONE

### III. Contract Items

NONE

IV. Additional Information Relevant to Approval of the Item

The real property donation request now before the County that is making this Ordinance amendment necessary is as follows:

The Wolf River Conservancy has tendered a request to the Chickasaw Basin Authority asking that two real properties owned jointly by the City of Memphis and County of Shelby, for the use and benefit of the Chickasaw Basin Authority, be transferred by donation to the Tennessee Wildlife Resources Agency.

The subject two real properties consist of two large unimproved wetland tracts of land, totaling 372.63 acres, located along the Wolf River in Fayette County. These two tracts of land were purchased in 2002 at a total cost of \$ 296,004.77, which was funded by revenues generated from the sale of surplus CBA real property in 2000, located north of Holmes Rd., west of Bledsoe Rd., which property was purchased by CBA in 1974 with funds from the State of Tennessee (See revenue use stipulations in the State's Quit Claim Deed and County Resolution on 2000 surplus property sale contained in the attached file – "Funding source for purchases.2000). Title to these two tracts of land was taken in the name of CITY OF MEMPHIS AND COUNTY OF SHELBY, FOR THE USE AND BENEFIT OF THE CHICKASAW BASIN AUTHORITY.

At the request of the Wolf River Conservancy, in February, 2006, the Chickasaw Basin Authority approved a motion during its meeting on 02/14/06 to donate these two large tracts of land to TWRA as a match for a grant through the U.S. Fish and Wildlife Service's North American Waterfowl Conservation Act fund (NAWCA) contingent upon Wolf River Conservancy receiving the grant. Subsequently, the Chickasaw Basin Authority executed the NAWCA Partner Contribution Form in July, 2006. Since then, the Wolf River Conservancy has won the grant and TWRA is ready to take title of the two tracts of land.

The Wolf River Conservancy worked with TWRA on this \$1,000,000 grant through the U.S. Fish and Wildlife Service's North American Waterfowl conservation Act fund (NAWCA). TWRA pledged another \$1,000,000 in cash as a match towards land acquisition. The purpose of the grant is to purchase wetland and bottomland forest acres along the Wolf to extend the Corps of Engineers Project's protected river corridor towards Rossville and Moscow. TWRA owns 1,000 acres immediately upstream of the Corps project; this grant intends to link them into one continuous, protected corridor. The purchase of additional land enabled by the grant will result in expanded protection by providing a buffer from the effects of illegal dumping adjacent to the river and reduce harmful pollutants entering the Wolf River that ultimately flows into Shelby County.

The donation of these two tracts of CBA land was approved by the Tennessee State Building Commission Executive Sub-committee on the Consent Agenda under Item Nos. D & E during its meeting on 2/25/08.

The transfer of these two tracts of land is subject to final approval by the City of Memphis and County of Shelby via. Resolutions to be approved by the Memphis City Council and the Shelby County Commission. At this point, without this proposed Ordinance amendment, there does not exist enabling authority for the County to make this real property donation to TWRA.

## SUMMARY

### **I. Description of Item**

This Resolution approves the 2008-2009 Shelby County Compensation Policy. This policy is adopted annually by the Shelby County Board of Commissioners outlines the policies and procedures for compensation adjustments.

### **II. Source and Amount of Funding**

Funds for compensation of county employees for the FY 2008-2009 fiscal year were included in the annual operating budget adopted on June 2, 2008 #33. A summary of the approved budget amounts for combined salaries and benefits are as follows:

County General Fund	\$246,653,436.00
Federal Grant Funds	14,030,578.00
State/ Federal Thru State	43,906,993.00
State Gas Tax	6,018,108.00
Enterprise Funds	60,062,236.00
Other	<u>8,712,369.00</u>
Total	<u>\$379,383,720.00</u>

### **III. Contract Items**

A. Type of Contract - N/A

B. Terms - N/A

### **IV. Additional Information Relevant to Approval of this Item**

Administration recommends approval of this Resolution.

Item \_\_\_\_\_

Prepared by: Mike Lewis

Commissioner \_\_\_\_\_

Approved by: \_\_\_\_\_

**RESOLUTION APPROVING THE SHELBY COUNTY COMPENSATION POLICY FOR FISCAL YEAR 2008-2009. THIS RESOLUTION IS SPONSORED BY COMMISSIONER JOE FORD**

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WHEREAS, It is desirous of the County to maintain a compensation policy which is fair equitably administered for its employees; and

WHEREAS, The Shelby County Civil Service Ordinances require the Administrator of Human Resources to prepare a schedule of compensation for the classified service for submission to the Civil Service Merit Board and the Shelby County Board of County Commissioners for approval;

WHEREAS, The policy as attached does not provide for an annual adjustment for employees; and

WHEREAS, The recommended policy is a guide on pay matters for use throughout Shelby County and is attached hereto and incorporated herein as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Compensation Policy for Fiscal Year 2008/2009 as per the attached Exhibit A, which is incorporated by reference, be approved.

\_\_\_\_\_  
AC Wharton, Jr.  
County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED \_\_\_\_\_

# **SHELBY COUNTY GOVERNMENT**



**Effective July 1, 2008**

## **COMPENSATION POLICY**



## **SHELBY COUNTY GOVERNMENT**

### **COMPENSATION POLICY**

#### **I. GENERAL COMPENSATION PLAN STANDARDS**

##### **A. PURPOSE**

The purpose of this policy is to establish a compensation plan and procedures for administration of rates of pay for new hire, promotion, demotion, reclassification, and other pay situations.

##### **B. PHILOSOPHY**

The Compensation Policy exists as a fair and equitable system for administering pay for Shelby County Government employees and to provide clear, concise, procedures that are applied and utilized uniformly.

##### **C. RESPONSIBILITY**

###### **1. Management Responsibility**

Elected Officials, Division Directors and Management in Shelby County Government are responsible for administering the provisions of this Compensation Policy and any interpretation of this policy that may be published throughout the year.

###### **2. Human Resources Department**

The Human Resource Administrator shall have the authority and responsibility for the overall development and administration of the Compensation/Salary Policy and Classification System for Shelby County Government.

It is the responsibility of each Department Official to maintain an up-to-date copy of this Compensation Policy and related information for employee access.

#### **II. CIVIL SERVICE MERIT SYSTEM**

The Civil Service Merit System of Shelby County Government was enacted by law to provide for a fair and consistent human resources management system for all employees.

Created by the Tennessee Private Acts of 1971 (Chapter 110), the Civil Service Merit System provides for a unified human resources system that operates under the direction of a five-person citizen board chosen by the elected officials of Shelby County Government.

The Civil Service Merit System statute specifies the following regarding classified and unclassified positions:

*Sec. 12-28. Unclassified and classified services.*

*(a) The civil service of the county is hereby divided into the unclassified and classified services.*

*(b) The unclassified service shall include:*

*(1) Officials elected by popular vote and persons appointed to fill vacancies in such elective offices;*

*(2) Members of duly established boards and commissions of the county;*

*(3) Any person retained by the county on a consulting basis and any professional person hired in his professional capacity as determined by the board;*

*(4) Any employee of the county whose employment is on a temporary basis;*

*(5) Any person who provides services to the county on a volunteer basis or who receives no compensation for such services;*

*(6) Any person employed by the county board of education;*

*(7) Such person occupying the position of department head, deputy department head, chief clerk, personal assistant to a department head or personal secretary to a department head as is designated by an appointing authority and approved by the board. The intent of this provision is to restrict positions in the unclassified service to those which involve sensitive policy-making duties. In granting its approval the board shall consider this intent as well as the size of the department in question. A list of these additional positions shall be prepared and maintained by the secretary (Human Resources Administrator).*

*(8) All county employees of the Shelby County Head Start Program.*

*(c) The classified service shall comprise all offices and positions of employment for the county not specifically included in the unclassified service.*

*(Priv. Acts 1971, Ch. 110, § 9; Priv. Acts 1984, Ch. 192, § 2; Ord. No. 281, 2-23-94)*

### III. **CATEGORIES OF EMPLOYEES**

#### **A. Status**

Refers to the terms and conditions of employment with Shelby County Government. The word 'appointment' refers to the employment /assignment of a person into an approved job position.

##### **1. Regular Permanent**

An employee designated as a regular employee may be a full-time or part-time employee. This employee will have successfully completed the new employment probation period.

**2. Durational**

A Durational Employee is an employee who is employed for a specific period (i.e., grant, contract or project) of twelve months or longer. Durational employees receive all benefits and are considered to be in the classified service and the equivalent of permanent employees except for the term nature of their employment.

**3. Temporary**

A Temporary employee is an employee whose time of employment is for **less than twelve (12) consecutive months**. A temporary may be full-time or part-time employee. A temporary employee employed for twelve (12) months must be separated from the payroll for a minimum of two weeks before being reemployed.

**B. Type (Classified/Unclassified)**

Type refers to classified and unclassified as described in Section II above..

**1. Classified**

Regular and Durational employees who have successfully completed new employment probation. These employees are subject to provisions of the Civil Service Merit System specifically adopted for employees in the classified service.

**2. Unclassified**

Unclassified employees are employees who are designated as “unclassified” under the Civil Services Merit System. These employees are not subject to the provisions of the Civil Service Merit System adopted for employees in the classified service and serve at the pleasure of the elected official/appointing authority.

Temporary employees and elected officials are also unclassified.

The Civil Service Merit System provides two avenues under emergency conditions for Elected Officials to hire an employee for a limited period when there is a bona fide emergency to do so.

**a. Provisional Appointment**

Provisional Appointment is defined as a temporary appointment by the Elected Official, only in the absence of an adequate number of candidates on the eligible applicants listing. The provisional appointee must meet the minimum requirements of the position.

- Such provisional appointments shall not exceed ninety (90) calendar days.

- Provisional appointees receive no benefits.

**b. Emergency Appointment**

An Emergency Appointment may be made where a bona fide “emergency” exists and a position must be filled immediately.

- Such appointments are time limited not to exceed ninety (90) calendar days. In no case, shall the same person be appointed for more than 100 working days during any twelve (12) month period.
- Emergency appointments may be made without regard to the appointee’s training and experience.
- Vacancies which result from maternity leave, retirement, military leave and similar actions are not be considered as emergencies.

**c. Change in Type**

A request to change the type of an employee must be submitted to Human Resources for review and approval and presented to the Classification/Civil Service Merit Board for approval.

**C. Collective Bargaining Employees**

**1. Collective Bargaining Groups**

Employees covered by a negotiated Memorandum of Understanding between Shelby County Government and the following groups:

- AFCSME Corrections, Local 1733
- AFCSME Sheriff, Local 1733
- AFCSME Head Start, Local 1733
- Building Security Officer Unit and Teamster Local, 1196
- Fire Fighters Association, Local 2585
- International Brotherhood of Electrical Workers-Craft, Trades, and Labor, Local 474
- International Brotherhood of Electrical Workers-Support Services, Local 474
- Shelby County Deputy Sheriff Association

Employees covered by a Memorandum of Understanding are covered by provisions of this policy not specifically addressed in the applicable Memorandum of Understanding.

Salary Schedules for Collective Bargaining Unit employees are on file in Compensation.

**2. Pay Adjustments**

Employees covered by a Memorandum of Understanding receive pay adjustments based on agreed rates in the Memorandum of Understanding.

Pay adjustments are processed through the Compensation section of the Human Resources Department.

Employees covered under a bargaining unit shall receive the same percentage general salary increase approved for all permanent Shelby County employees by the Shelby County Commission for a given fiscal year.

Unless specified otherwise by the Memorandum of Understanding, Bargaining Unit employees should have a current annual performance evaluation with a rating of at least 'Achieves/Competent'. The employee performance evaluation must be documented and filed in the Human Resources Department within the last six (6) months.

**IV. ORGANIZATION LEVELS AND MANAGEMENT HIERARCHY**

Elected Officials are responsible for all personnel actions within their offices and adherence to the Compensation Policy.

The minimum salaries of Elected Officials are set by the State of Tennessee Legislature. Salary increases are approved according to state provisions. If so dictated, Elected Officials and Judges receive annual increases according to state policy each year as issued by the appropriate state regulatory agency or office; otherwise, these officials fall under the provisions of this Compensation Policy. The Mayor's salary is set by the Shelby County Board of Commissioners.

The Shelby County Government hierarchy/reporting structure reflects the following for the Mayor and an Elected Official's office:

<b>MAYOR</b>	<b>ELECTED OFFICIAL</b>
CAO/CFO	
Division Director	Chief Administrator
Administrator	Administrator
Deputy Administrator	Deputy Administrator
Manager	Manager
Supervisor	Supervisor
Professional	Professional
Administrative/Clerical	Administrative/Clerical

This reporting structure represents a general structure that may be found in large offices but does not reflect the reporting structure for every area or department.

The difference in organizational structure and positions is based on duties and responsibilities of the positions, their scope and impact, and the complexity of duties performed.

V. UNCLASSIFIED EMPLOYEE **APPOINTMENTS**

A. **Approved Positions**

Employees who are unclassified must be placed in **approved job classifications** with a grade assignment and associated range in the Shelby County Classification System.

New positions must be evaluated for grade assignment and title.

Unclassified positions to be filled by appointed employees are not normally posted and employees do not generally go through the employment process.

B. **Rates of Pay**

Compensation should be consulted prior to the completion of an appointment letter.

- The rate of pay should be based on the candidate's level of education and experience in relation to the minimum qualifications for the position.
- The rate of pay should not exceed midpoint of the salary range assigned to the position and may not exceed the budgeted rate of pay (please note that this may require a budget adjustment prior to implementation).
- Internal equity with employees in the same position and equal or greater years of experience should be considered as part of determining the rate of pay for the appointed employee.

C. **Appointment Letter**

After agreement on the rate of pay, a letter of appointment should be forwarded to Compensation. The Appointment Letter should include:

- Name
- Job Title
- Position Information
- Salary
- Effective Date of the Appointment

D. **Salary Petitions or Letters of Agreement**

After hire, employees who are designated as Unclassified have pay administered through a Salary Petition or Letter of Agreement developed each fiscal year. A **Salary Petition** is filed by the Elected Officials for the purpose of establishing the number, job title and authorized salaries for **appointed** employees within the Elected Official's office.

Compensation reviews the salary petition for conformance to the compensation policy and the Finance Department reviews the petition for compliance with the adopted budget. Compensation then prepares a response of agreement or disagreement with the salary petition request. The County Attorney's Office facilitates the final review and completion of all salary petitions. Salary Petitions are filed with the court to have the salaries approved by a judge.

In lieu of a Salary Petition, a **Letter of Agreement** may be filed between the Elected Official and Mayor of Shelby County. The Letter of Agreement establishes the number, job title and authorized salaries of unclassified appointed employees for the Elected Official's office. Compensation reviews the Letter of Agreement for conformance to the compensation policy and the Finance Department reviews the petition for compliance with the adopted budget.. After determination that the Letter of Agreement is in compliance with Compensation Policy, the approved document is filed in Compensation to assure compliance throughout the fiscal year, and also filed with the Court, as required by state law.

**E. Failure to be Reappointed/Loss of Appointment**

If an unclassified appointed employee is not re-appointed or the appointment is withdrawn and the employee held a civil service classified position immediately prior to the appointment, certain provisions within the Civil Service Merit System apply.

Upon expiration of the appointment, the employee is eligible to return to a position level equal to their last classified position. Salary determination shall be consistent with what the employee **earned** at the classified level had he/she not accepted the appointment. However, in no event should there be a loss or gain in pay or grade when returning to classified status.

**VI. JOB DESCRIPTIONS**

**A. Role of Job Descriptions**

A job description describes an employee's specific duties and responsibilities. The accuracy of the job description is essential to the Shelby County Government classification system. It ensures proper grade assignment and placement in the hierarchy of positions county-wide. Additionally, this document is used for a variety of reasons such as court cases, performance evaluations, job training, promotions, establishment of recruiting standards, etc.

- All positions must have job descriptions on file in Compensation.
- All employees should be provided with a copy of their job description.
- Each department head should maintain a job description on file for each employee.
- Job descriptions should accurately reflect the major duties the employee is required to perform.

**B. Job Description Format**

- **Job Identifier/Information**  
Includes department name, job code, job title, job grade, and FLSA designation.
- **Job Summary**  
Summarizes the major responsibility/function of the job.
- **Reports To**  
Identifies title/management level the position reports.
- **Duties and Responsibilities**  
The job description is a written statement of a job's duties and responsibilities. It should list the major and most important tasks performed in the job. The description should not list every individual responsibility or duty of the position but should describe the major responsibilities of the job.
- The last entry in the Duties and Responsibility section of every job description should include the statement, **"Performs related responsibilities as required or directed"**. This statement is referred to as the "Disclaimer". It encompasses those job responsibilities that are not specifically listed in the job description.
- **Minimum Qualifications**  
Education, training, experience, licensing or certifications and any other qualifications necessary to perform the job; should be included in the minimum requirements. These requirements must be the minimum required to perform the job. These requirements should not be based on the incumbent in the position.
- **Knowledge, Skills and Abilities Required**  
List special or unique knowledge, skills, abilities required to perform the job

**C. Job Description Changes**

When job responsibilities change, the job description should be updated and sent to Compensation.

A **significant change** in the major responsibilities requires a job evaluation to ensure the correct grade assignment. (See Job Evaluation)

It is the responsibility of management to ensure job descriptions are accurate, up-to-date, and on file in Compensation.



VII. **FAIR LABOR STANDARDS ACT**

**A. Overview**

The Fair Labor Standards Act of 1938, as amended (referred to as "FLSA"), is published in law in sections 201-219 of title 29, United States Code. The Act provides for minimum standards for both wages and overtime entitlement, and spells out administrative procedures by which covered work hours must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities.

**B. Exempt vs. Non-exempt**

An *FLSA exempt* employee is one who *is not covered* by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA or Act).

An *FLSA nonexempt* employee is one who *is covered* by the minimum wage and overtime provisions of the Act. Non-exempt employees are eligible for overtime.

**C. Overtime**

It is the philosophy of Shelby County Government that overtime is distributed as fairly and equitably as possible among employees covered by this Policy who are in the job classification needed to do the work within that department. **Employees who are designated as non-exempt**, as defined under the provisions of the Fair Labor Standards Act by Human Resources, are eligible to receive overtime pay at one and one-half times the normal rate of pay.

**D. Compensatory Time**

Compensatory time off may be provided in lieu of overtime pay. Overtime pay refers specifically to the overtime pay thresholds for job classifications pursuant to the Fair Labor Standards Act (FLSA). Such overtime pay rates will not be less than one and one-half hours for each hour of employment for which overtime is worked.

FLSA status is designated on Shelby County Government job descriptions. For further information contact Compensation.

VIII. **JOB EVALUATION**

**A. Overview**

A job evaluation is an analysis of the duties and responsibilities of the job. The job evaluation identifies and determines the value of the job in relation to all other jobs based on both internal and external factors. In a job evaluation, only the job is evaluated and not the person holding the job. The job evaluation does not consider the employee's performance or the years of service of the employee. A job evaluation should not be used as a predisposition for a salary adjustment.

**If pay is a concern, a request for a salary review should be submitted to Compensation (See Pay Exceptions).**

A job evaluation provides for the grouping of positions which contain similar duties and responsibilities and which require similar qualifications, knowledge, skills and abilities.

A job evaluation is initiated when a new position is developed or the duties of an existing position are significantly and substantially changed on a permanent basis.

If a position has been reviewed for correct grade assignment, the position cannot be submitted for another job evaluation for at least 12 months since the last job evaluation.

Temporary employees cannot be reclassified as a result of a job evaluation.

**B. Job Analysis**

The basis of a job evaluation is the job description. An accurate listing of the major duties and responsibilities of the job must be assembled to begin the process. An analytical review is then initiated to determine, among other factors, the complexity of the position, the scope and effect of the position, guidelines governing the work performed and supervisory controls.

A written analysis that identifies and analyzes the primary duties and responsibilities of a position is developed. A grade is then assigned which places the job in the hierarchy of existing positions. Job evaluations establish grades which maintain equity between jobs.

**C. Procedure to Request a Job Evaluation**

Written request to the Human Resources Administrator from the Elected Official, Division Director or Chief Administrative Officer or their designee to evaluate the position for proper classification must be provided.

The request should include:

- A job description or a listing of job duties and responsibilities.
- An organization chart where the position(s) are assigned.

**D. Approvals**

Once the request is submitted, Human Resources Compensation will ensure the completion of a sound job description and determine grade assignment. It is essential that the integrity of the job evaluation system is maintained to ensure equitable grade assignments and to help build confidence that grade assignments are free from irrelevant influence.

*[The Classification Committee of the Civil Service Merit Board is responsible for hearing/reviewing the establishment, reclassification, and appeal of grade assignment for positions grade 49 or above. Grade assignments are also confirmed by the Civil Service Merit Board.]*

**IX. JOB GRADES/SALARY RANGES**

**A. Job Grades**

The grade of a position is a numerical level in the Compensation Classification Plan. The grade is assigned through a job evaluation of the position. The job evaluation determines the relative value of positions within a hierarchy of positions. The grade assignment of each position carries a range of pay for the position. The pay level of each employee is determined by the employee's job title/position and corresponding grade assignment. However, pay for employees within the same job title may vary based on length of service, experience, promotion or other factors.

**B. Salary Ranges**

Based on the duties and responsibilities involved, each non-bargaining unit position is assigned a job grade. Each job grade is assigned a range of pay consisting of a minimum to a maximum amount.

There are 29 grades in the Pay Range Structure of Shelby County Government. The grades range from 35 to 63.

The salary ranges were established to allow for flexibility in hiring experienced individuals and to ensure Shelby County Government's ability to compete with other organizations to obtain qualified individuals in a competitive job market.

The minimum of the salary range represents the lowest salary applicable for jobs assigned to that particular grade. The maximum of the salary range represents the highest salary applicable for jobs assigned to that particular grade. The midpoint of the range generally reflects the market rate for the job.

**No employee shall be paid below minimum of the range.**

The Pay Structure is reviewed annually by Compensation to determine market competitiveness. .

**X. BONUS AWARDS**

Annual bonus pay awards may be considered for employees with outstanding performance based on standards described in Section XVII of this policy.

**XI. GENERAL ADJUSTMENTS**

An annual general adjustment occurs when the Board of Commissioners approves a general pay adjustment for all eligible County employees.

**A. Eligibility**

**All permanent employees** are eligible for the General Adjustment.

To complete eligibility for the adjustment, employees are required to have a current annual performance evaluation with a rating of at least "Achieves/Competent". The employee performance evaluation must be documented and filed in the Human Resources Department within the last six (6) months proceeding the effective date of Compensation Policy.

**Temporary employees are not eligible for the General Adjustment.**

**Employees on leave of absence or who have a major disciplinary action within the last 12 months are not eligible.**

The Mayor's salary is set by the Shelby County Board of Commissioners.

**Bargaining unit employees** shall receive the same percentage general salary increase approved for all permanent Shelby County employees by the Shelby County Commission for the fiscal year, unless specified otherwise by the Memorandum of Understanding.

**B. Original Employment Probation**

Employees hired at the salary grade minimum who have not completed the original employment probation period of six months at the effective date of the general increase remain at their current rate of pay until the probationary period is completed. At the completion of the probation period they shall receive the general adjustment provided performance is at the "Competent/Achieves" level. A written performance appraisal documenting performance proficiency is required.

**C. Performance Probation**

If an employee's job performance has been determined to be below competent or not meeting standards and documented, an employee may be placed on performance probation for a set period of time that is sufficient (generally 90 days) to allow the employee to improve performance.

At the end of that time, another written evaluation should be conducted to determine if the employee's performance is at an acceptable level. If the performance has improved and it is documented by the performance review, a salary change should be initiated to provide the general adjustment effective the first day of the pay period the performance review is completed and submitted. A general adjustment will not be provided unless the required documentation is provided.

**D. Major Disciplinary Action**

A major disciplinary action is defined as an inappropriate action or conduct by an employee that results in demotion, disciplinary probation, or disciplinary suspension.

Employees, who are on performance probation subject to specific remedial improvement standards at the time of the general increase, must satisfy the remedial performance standards satisfactorily before receiving the general adjustment and will not be retroactive to the effective date of the general adjustment.

**E. Leave of Absence**

Employees who are on an approved leave of absence as of the effective date of the general increase will be covered by provisions of this Policy the day they return to active work status.

**F. Termination**

Employees who have terminated and ceased active work on or before the effective date of a general adjustment because of retirement or any other reason but who are still on the active payroll system because of payoff for accrued leave, etc., will not receive any increase in pay.

**XII. SALARY ADMINISTRATION**

**A. Exclusions**

- Employees in grant funded positions, where the grant has budgetary limitations.
- Employees whose salaries are set by state legislative act.
- Employees covered by a Memorandum of Understanding.

**B. Employment**

**1. New Hires**

New hire employees are generally placed at the minimum of the salary range of the corresponding grade.

**a. Pay Above Minimum**

Employees, who bring significantly greater qualifications to the position, may be hired at rates above the minimum.

Other factors that may influence a rate above minimum include recruiting problems associated with filling the position, a specialized/technical field, and/or uniqueness of the job.

**Compensation must be consulted prior to a job offer with a rate above minimum, to ensure the pay rate does not create inequity with employees in the same position.**

Hiring criteria may be developed by Compensation for unique positions to provide specific guidelines for hiring rates.

**b. Factors To Consider When Hiring Above the Minimum Rate**

- The applicant's education and work experience should exceed the minimum requirements for the position.
- Internal equity must be taken into consideration. Salaries and qualifications of current employees in the same position within the department/county should be considered to ensure that new employees with lesser qualifications are not hired with a salary greater than current employees.
- **No applicant should be hired above midpoint of the range for the position.**

**c. Probation**

New employees hired or rehired into a permanent or durational position must successfully complete a probationary period of not less than six (6) months.

Before the end of the probationary period, a performance evaluation should be completed to document performance during the probationary period.

Until probation is completed satisfactorily, classified employees do not attain classified status entitling them to the rights, privileges, and protection of the Civil Service Merit System.

No additional increase is provided (other than a General Increase).

Employees hired prior to **October 1, 2006**, and who were on a Special Salary Schedule as provided under the 2005-2006 Salary Policy will continue to progress to the maximum of the schedule. Employees hired on or after October 1, 2006, and who were not on a Special Salary Schedule are not eligible for any additional increase other than the general adjustment increase.

**2. Temporary Employees**

Temporary employees are hired at entry of the position. Any exception must be approved by the Human Resources Administrator.

**3. Reinstatement**

Any employee who held regular or durational status, and who separated in good standing may be reinstated under the following conditions:

- Return is within two (2) years of termination
- Re-entry into the County's employment system is made through the normal hiring process.

Reinstatement will entitle the employee to service credit for time earned during the previous employment period, which will provide the employee with an adjusted service date “for benefit purposes”. Civil Service status is also retained when a former employee is reinstated, which makes the employee eligible immediately for annual, sick and bonus leave as it is accrued.

No accrued leave left on the books from the previous employment period may be retained.

Reinstated employees return to previously held position may receive the rate of pay paid at the time of separation provided the rate of pay is within the salary range and does not exceed maximum of the range.

A former employee of County government who has been gone from employment for more than two years and is returning to County employment will be re-employed or rehired as a new employee without prior service credit or benefits. The rate of pay will be determined based on the new hire pay policy (see Salary Administration – New Hire). Employees who are reinstated and were in Retirement Plan B during their previous employment period must enter as a new employee into Plan C. Reinstated employees who were previously in Plan A receive prior pension service credit. Contact the Retirement Office for additional information.

**4. Return from Military Active Duty**

Any employee who leaves or has left the County’s employment to enter active duty with the Armed Forces of the United States and who subsequently is reinstated to a previously held position, may be reinstated at the rate of pay to which the employee would have been entitled had County service not been interrupted by service in the Armed Forces.

**C. Promotion**

**A promotion is the advancement to a different job classification with a higher salary grade.**

**1. Eligibility for Promotion**

- Completion of the original six (6) months new employment probation.
- At least six (6) months in the position.

**2. Pay Increase**

The successful candidate for promotion to a higher pay grade shall receive up to a 5% increase or minimum of the new range whichever is greater for the promotion increase.

No additional pay increase is provided (other than a General Increase).

**3. Probation Period after Promotion**

Current employees who are promoted must serve a 90 or 180 day probation in the new position. The length of probation is based on department practice.

**D. Demotion**

A demotion is defined as the movement of an employee from a job assigned to one grade to a job with a lower grade.

A demotion will result in a reduction in salary of at least 5%, generally not to exceed 15%. If the reduction exceeds the maximum of the range, the salary will be reduced to the maximum. No employee may exceed maximum of the salary range of the grade assigned.

**E. Temporary Demotion**

A Temporary Demotion may be imposed for a specified period of time for having committed a major infraction (major disciplinary action). After completion of the designated period of demotion, the employee is returned to original status.

Normal demotion guidelines apply.

**F. Return to a Previously Held Position**

Current employees who return to a previously held position within six (6) months may return to the rate of pay earned prior to the promotion to include any recently awarded general adjustment. No gain in salary resulting from the promotion is to be realized if the employee served less than six months in the promoted classification.

A salary reduction may be required as a result of

- disciplinary action or
- change in grant funding.

Such pay reductions must be approved by the Appointing Authority and the Human Resources Administrator.

**G. Lateral Transfers**

A lateral transfer is defined as movement of an employee from one position to another with the same pay grade. This type of movement results in no change in pay.

**H. Reassignments**

An employee, at the discretion of the appointing authority or a designated representative, may be reassigned from one position to another in the same class provided the employee meets or exceeds the minimum acceptable



qualifications of the position. The employee shall retain the same status and pay in the new position that he/she had in the previous position in the same class. An employee who is reassigned does not have the right of appeal.

**I. Bargaining Unit**

Pay of Bargaining Unit employees are governed by the Memorandum of Understanding for their respective group.

**J. Displaced Employees**

Employees who become displaced by a reduction in the work force and are subsequently placed in a new classification in a lower pay grade are to be placed between the minimum and midpoint of the range in their new pay grade. Salary is set based on consideration of pay rates of current employees with equal or greater years of experience. The final rate of pay is contingent upon

- internal equity,
- budgeted funds being available and the salary being available;
- and consistency with the Salary Petition or Letter of Agreement, where applicable.

**K. Grant Changes**

**1. Change in Position**

Employees who experience changes to their position based on grant funding will have their pay set based on the new position and pay grade assignment. Promotion, demotion, or transfer policy will apply based on availability of funds.

**2. Return to Original Position**

Employees who return to their original position within 24 months due to the restoration or renewal of grant funds may be placed at their previous pay grade and rate, provided funds are available.

**L. Certifications/Licenses**

Pay for certification is generally not provided.

**XIII. PAY EXCEPTIONS**

Requests for exceptions to the Compensation Policy must be made in writing to Administrator of Human Resources. Full documentation detailing the rationale and circumstances of the request must be included. The request must be approved by the Elected Official and/or their designee. The Administrator of Human Resources has final approval of pay exception requests.

**A. Equity Adjustments**

A pay adjustment for equity purposes may be made as a result of a review/study by Compensation. Such an adjustment is designed to ensure equity in pay levels internally and/or externally. An equity adjustment is not

designed to provide a reward for job performance, long term service or other reasons of this nature.

**B. Salary Compression Adjustments**

Salary compression may result from a subordinate with a higher salary because of special skills or market demands being compensated higher than the management level to which the subordinate reports. The immediate management level may be eligible for up to a 5% salary increase above the subordinate to alleviate salary compression.

In the event the subordinate is paid additional pay for possession of license or certification, the management level shall not be paid additional unless the management position is required to possess the same or higher credential of that skill set.

**C. Out of Class**

Out of class assignment is defined as a temporary condition that requires an employee in a lower graded position to perform the duties of a higher graded position. Medical leave of absence, job vacancy, budget restraints are typical types of conditions that may result in an out of class assignment. The following conditions apply.

- The employee assumes at least half of the major duties and responsibilities of another position.
- The assumed duties are clear distinctions from the other position.
- The situation must be temporary.
- Temporary employees are not eligible for out of class if permanent employees are available to assume the additional duties.

The assumption of the additional duties must be fully documented

An employee must be assigned an out of class assignment of at least 60 days prior to becoming eligible to receive out of class pay.

Up to a 5% salary adjustment may be provided. At the end date of the assignment, the increase in pay will be withdrawn.

The effective date for pay eligibility for performing out of class work is the date approved by Human Resources based on timely notification by the department of the 'out of class' pay need as described above.

**XIV. EMPLOYMENT SEPARATION**

Employment separation may be voluntary (resignation) or involuntary (layoff: discharge for cause). The separation date is the effective date of the resignation or discharge as approved and recorded in the master personnel file.

A classified civil service employee may be dismissed for just cause. Any termination for cause can be appealed to the Civil Service Merit Board, if the employee has successfully completed new employment probation.

Unclassified employees are not eligible for appeals before the Civil Service Merit Board.

**Final Pay at Separation**

1. Payment of final earnings resulting from employment separation will be made in one check no later than the next pay date following termination. This payment will include all accrued annual and bonus time for exempt employees. Compensatory time may be included for employees with non-exempt status (with documentation). This does not apply to any employee retiring under the Shelby County Retirement System.
2. Accrued but unused annual leave, bonus days and compensatory time must be verified and computed by the terminating department. Leave calculations will be submitted on the subsequent payroll sheet and forwarded to the Finance Department.
3. It is the responsibility of the department to forward immediately to the Human Resources Department, the appropriate forms that indicate termination as soon as the date of termination is known. No payment for leave is permissible without a written resignation or other appropriate termination document.
4. Should accrued annual leave, bonus days, and/or compensatory time extend final pay for more than one pay period, the terminating department should pay out the employee with one check for all remaining pay.
5. The amount of the final pay will be charged to the appropriate salaries and labor account of the terminating department.
6. In no event, will an employee at the time of job severance be paid vacation pay if the employee has not successfully completed the new employment probation.
7. The maximum amount of payout for annual leave at termination is one and one-half times the amount of leave the employee can earn in one year.
8. Retiring employees on leave cannot accrue additional leave of any kind.

**XV. LEAVE PAY POLICY**

**A. Annual Leave Pay Policy**

Pay in lieu of vacation is not permitted, except at termination.

**B. Sick Leave Pay Policy**

For the purpose of calculating leave credit, credit includes all continuous work time spent as a full-time or part-time regular or durational employee of the County. Continuous permanent service with the City of Memphis, Attorney General, or Agricultural Extension Service immediately prior to a direct transfer to County employment is also creditable. This does not include temporary service.

This sick leave credit is relinquished once an employee terminates employment.

- XVI. The Compensation Policy is a guide on pay matters for a given year. This policy is approved annually by the Board of Shelby County Commissioners. The Administrator of Human Resources, subject to the approval of the County Mayor, is authorized to make any necessary administrative interpretation concerning the Compensation Plan not inconsistent with any existing personnel law.**

**Notwithstanding the provisions of the Civil Service Merit Act, this Compensation Policy supersedes previous salary policies, personnel systems, plans or guidelines and will remain in effect until a subsequent plan is approved by the Board of Shelby County Commissioners.**

**XVII Fiscal Year 2008 – 2009 Pay Plan Directives**

**A. General Increase**

**No general increase is authorized for this fiscal year.**

**B. Hiring**

**Hiring is limited to the availability of funds and/or the authorization of the funding source.**

**C. Reclassifications**

**Approved job evaluations resulting in reclassification to a higher salary level is not authorized unless otherwise provided by the approved budget of the funding source.**

**D. Bonus Awards**

**Bonus awards are not authorized for fiscal year 2008 -2009.**

**The Shelby County Board of Commissioners has established a select oversight committee, chaired by the Human Resources Administrator, to administer the directives of this section.**

**SHELBY COUNTY GOVERNMENT  
SALARY RANGES  
2008-2009**

<u>GRADE</u>	<u>MINIMUM</u>	<u>MIDPOINT</u>	<u>MAXIMUM</u>
63	\$110,109	\$132,131	\$154,153
62	\$100,556	\$120,667	\$140,778
61	\$91,832	\$110,199	\$128,565
60	\$83,865	\$100,638	\$117,411
59	\$76,589	\$91,907	\$107,225
58	\$70,265	\$84,318	\$98,371
57	\$64,463	\$77,356	\$90,248
56	\$59,688	\$71,626	\$83,563
55	\$55,652	\$66,783	\$77,913
54	\$52,011	\$62,413	\$72,815
53	\$48,608	\$58,330	\$68,051
52	\$45,851	\$55,021	\$64,191
51	\$43,466	\$52,159	\$60,852
50	\$41,396	\$49,675	\$57,954
49	\$39,425	\$47,310	\$55,195
48	\$37,548	\$45,058	\$52,570
47	\$35,772	\$42,927	\$50,080
46	\$34,116	\$40,939	\$47,762
45	\$32,592	\$39,111	\$45,630
44	\$31,128	\$37,354	\$43,579
43	\$29,676	\$35,611	\$41,546
42	\$28,340	\$34,008	\$39,676
41	\$27,050	\$32,460	\$37,870
40	\$25,800	\$30,960	\$36,120
39	\$24,600	\$29,520	\$34,440
38	\$23,500	\$28,200	\$32,900
37	\$22,460	\$26,952	\$31,444
36	\$21,470	\$25,764	\$30,058
35	\$20,500	\$24,600	\$28,700
34	\$19,800	\$23,760	\$27,720
33	\$10,800	\$15,800	\$20,800

Item #: \_\_\_\_\_

Prepared By: Steve Summerall

Approved By: Brian Kuhn  
County Attorney

RESOLUTION BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE REQUIRING CRIMINAL, SEX OFFENDER, AND CHILD SUPPORT BACKGROUND CHECKS FOR ALL NOMINEES TO ANY BOARD, AGENCY, OR COMMISSION THAT ARE APPOINTED AND/OR CONFIRMED BY THE BOARD OF COUNTY COMMISSIONERS. SPONSORED BY COMMISSIONER HENRI E. BROOKS.

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WHEREAS, the Shelby County Board of Commissioners regularly appoint members to various boards, commissions and agencies; and

WHEREAS, it is necessary to establish a process for requiring criminal, sex offender, and child support background checks for each nominee in considering these appointments; and

WHEREAS, the County Attorney's office is hereby requested to assist in drafting any necessary consent/authorization forms for completion by nominees and coordinating a process for background checks with the Sheriff's Office and Juvenile Court.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That criminal, sex offender, and child support background checks are required for all nominees to any board, agency, or commission appointed and/or confirmed by the Board of Commissioners.

BE IT FURTHER RESOLVED, that the County Attorney's office shall draft any necessary consent/authorization forms for nominees and coordinate said background checks with the offices of Sheriff and Juvenile Court.

BE IT FURTHER RESOLVED, That this resolution shall take effect for any nominees considered after June 1, 2008.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Deputy Clerk of County Commission

ADOPTED: \_\_\_\_\_

ITEM # \_\_\_\_\_

PREPARED BY: Mike Swift

COMMISSIONER: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_

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RESOLUTION ELIMINATING PAY FOR UNUSED SICK LEAVE AT RETIREMENT FOR  
NEW EMPLOYEES. SPONSORED BY COMMISSIONER SYDNEY CHISM.

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**WHEREAS**, The County's policy has been to pay employees with salaries under \$60,000 for unused sick leave at retirement up to 75 days at the lower of their rate of pay or \$20,000 annually; and

**WHEREAS**, The County's estimated liability for unused sick leave to be paid at retirement was approximately \$10 million as of June 30, 2007; and

**WHEREAS**, The County has decided to reduce its future liability for unused sick leave to be paid at retirement.

**NOW THEREFORE BE IT RESOLVED, BY THE BOARD OF COUNTY  
COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That for the policy providing pay for  
unused sick leave at retirement is hereby amended to exclude employees hired after May 12, 2008.

\_\_\_\_\_  
A C Wharton, Jr.  
County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

## SUMMARY SHEET

### **I. Description of Item**

This resolution amends the policy of paying employees for unused sick leave at retirement to make employees hired after May 12, 2008 not eligible for this benefit. This will reduce our future liability for payment of sick leave.

### **II. Source and Amount of Funding**

Not applicable.

### **III. Contract Items**

Not Applicable.

### **IV. Additional Information Relevant to Approval of this Item**

Administration recommends approval of this resolution.



ITEM NO: \_\_\_\_\_

PREPARED BY: Fred E. Jones, Jr.

APPROVED BY: Fred E. Jones, Jr.

**A resolution to appoint a Judicial Commissioner and set the term of the appointment. Sponsored by Commissioner Joe Ford.**

---

**WHEREAS**, Authority is granted pursuant to public chapter number 984 of the Public Acts of 1998 and T.C.A. §40-1-111 as amended for the appointment by the Chief Legislative body of one or more Judicial Commissioners and grants them authority to establish terms for Judicial Commissioners that are appointed; and

**WHEREAS**, Shelby County Criminal Court is owed approximately \$250,000,000.00 in fines and costs, much of which is delinquent and that Shelby County General Sessions Criminal Court is owed approximately \$167,000,000.00 in outstanding fines and costs; and

**WHEREAS**, it is the intent of the Board of Shelby County Commissioners to appoint a Judicial Commissioner pursuant to T.C.A. §40-1-111 as amended whose sole responsibility will be to hear cases relating to unpaid fines, fees, levies, court costs, and other monies owed to the General Sessions Court of Shelby County; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That a new Judicial Commissioner position shall be created for the sole purpose of collecting unpaid fines, fees, levies, court costs and other monies owed to the General Sessions Court of Shelby County Tennessee.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## SUMMARY SHEET

### **I. Description of Item**

This contract is for delivery and pick up of voting machines and equipment to voting locations throughout Memphis and Shelby County, Tennessee during FY2009. The total contract is not to exceed \$115,000.00. The Election Commission has voted and requested that the current contract with Tony Lanigan Moving Services, Inc. be amended for a one year period for a term to begin July 1, 2008 and ending June 30, 2009 . Funds for this purpose are budgeted in the general fund budget of the Election Commission.

### **II. Source and Amount of Funding**

Funds are available in the FY2009 operating budget of the Shelby County Election Commission as follows:

010-202902-6428, Freight & Storage - 5,000.00

010-202904-6428, Freight & Storage - 55,000.00

010-202906-6428, Freight & Storage - 55,000.00

TOTAL \$115,000.00

### **III. Contract Items**

A. Type of Contract – Service Agreement

B. Terms - The contract term for this renewal period will be One (1) year from July 1, 2008 through June 30, 2009.

### **IV. Additional Information Relevant to Approval of this Item**

The administration recommends approval of this resolution.

ITEM NO: \_\_\_\_\_

PREPARED BY: Deborah K. Lingo

COMMISSIONER \_\_\_\_\_ APPROVED BY: \_\_\_\_\_

**RESOLUTION TO APPROVE AN AMENDMENT TO THE CONTRACT WITH TONY LANIGAN MOVING SERVICES FOR AN ADDITIONAL ONE YEAR RENEWAL REQUIRING THE EXPENDITURE OF FUNDS IN THE AMOUNT OF \$115,000.00 FOR THE FURNISHING OF DRAYAGE SERVICES TO THE ELECTION COMMISSION FOR VOTING MACHINES AND EQUIPMENT AND THIS ITEM REQUIRES EXPENDITURE OF COUNTY GENERAL FUNDS. SPONSORED BY COMMISSIONER DEIDRE MALONE.**

---

**WHEREAS**, That Shelby County Government has need for the drayage of voting machines at the time of County elections; and

**WHEREAS**, That a Request for Proposal No. RFP#07-006-71, Voting Machine Drayage was issued on June 25, 2007 by the Shelby County Purchasing Department on behalf of the Shelby County Election Commission requesting bid quotations for drayage of the voting machines and equipment; and

**WHEREAS**, That Tony Lanigan Moving Services Inc. hereinafter referred to as "Contractor" has the knowledge and expertise to provide such services; and

**WHEREAS**, Both parties are desirous of renewing the current contract for a one year period beginning July 1, 2008.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That an amendment to the current contract between Shelby County Government and Tony Lanigan Moving Services, Inc. is for drayage of the voting machines and equipment for a one year renewal period for a sum not to exceed \$115,000 is hereby approved.

**BE IT FURTHER RESOLVED**, That funds are hereby appropriated from the FY2009 Operating Budget in the amount of \$5,000.00 from Account Number 010-202902-6428, Freight and Storage; \$55,000.00 from Account Number 010-202904-6428, Freight and Storage; and \$55,000.00 from Account Number 010-202906-6428, Freight and Storage totaling \$115,000.00.

**BE IT FURTHER RESOLVED**, That the County Mayor is hereby authorized to execute the amendment to the original contract and any and all other documents necessary to effectuate the intent of this resolution.

**BE IT FURTHER RESOLVED**, That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants in amounts not to exceed \$115,000.00 for the purposes contained in this resolution to Tony Lanigan Moving Services, Inc. and to take proper credit in their accounting therefore.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_



## **Amendment to Agreement**

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Shelby County Government (hereinafter "County") and TONY LANIGAN MOVING SERVICES, INC., (hereinafter "CONTRACTOR").

WHEREAS, pursuant to RFP #07-006-71 the parties previously entered into an agreement (hereinafter "Agreement") dated October 12, 2007, for the provision of professional services for the delivery and pick up of voting machines for elections held in Shelby County with the option to renew for two (2) one (1) year periods; and

WHEREAS, the parties now desire to enter into this Amendment to renew the Agreement for the period beginning July 1, 2008 through June 30, 2009 with the option to renew for one additional period per RFP # 07-006-71; and

WHEREAS, this Agreement extends the services of the CONTRACTOR to include, but not limited to, the following voting dates August 7, 2008, November 4, 2008 and December 9, 2008.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this Agreement and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Section I of the Agreement entitled SCOPE OF WORK is hereby amended to extend the provision of the Services to include, but not limited to, the following voting dates August 7, 2008, November 4, 2008 and December 9, 2008.
2. Section II of the Agreement entitled TERMS AND COMPENSATION is hereby amended to commence upon the execution of this Agreement and continue through June 30, 2009.
3. The total cost for this renewal period shall not exceed ONE HUNDRED FIFTEEN THOUSAND AND 00/100 (\$115,000.00) Dollars payable in accordance with the terms of the Agreement.
4. The terms and conditions of the original Agreement, except as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**APPROVED AS TO FORM  
AND LEGALITY:**

**SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_  
Contract Administrator

\_\_\_\_\_  
A C WHARTON, JR, MAYOR

Assistant County Attorney

**TONY LANIGAN MOVING SERVICES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_, the within named bargainor, a corporation, and that he as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

WITNESS my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **SUMMARY**

### **I. Description of Item**

This resolution approves an amendment to the contract with Diebold Election Systems, Inc. for the purchase of the Accuvote TSX voting system and the Electronic Poll Book Voter Verifiable Paper Audit Trail. The total amount of the original appropriation was \$4,213,860.26 for the voting system and \$2,245,353.15 for the Electronic Poll Book and Voter Verifiable Paper Audit Trail. These funds were appropriated as CIP funds in the resolution approving this purchase adopted as item # 38 on March 13, 2006. The Election Commission has voted to request the approval by the Shelby County Board of Commissioners of a change to the specifications detailed on Schedule D of the original contract with Diebold to reallocate the funds specified for the Voter Verifiable Paper Audit Trail to purchase additional Electronic Poll Books. The funds specified on Schedule D for the Voter Verifiable Paper Audit Trail System was \$677,550.00. The Election Commission has voted to reallocate these funds for the purchase of additional Electronic Poll Books. The reallocation of these funds will not exceed the originally appropriated CIP funds for this purpose.

### **II. Source and Amount of Funding**

Capital Improvement Funds originally appropriated by resolution 38 adopted on March 13, 2006. The amount appropriated was \$6,459,213.41. The amount to be reallocated for the purchase of additional Electronic Poll Books is \$677,500.00

### **III. Contract Items**

Amendment to Schedule D itemizing components of the Voting Machine Implementation Project in the contract entered into between Diebold Elections Systems, Inc. and Shelby County approved by resolution 38 adopted on March 13, 2006.

### **IV. Additional Information Relevant to Approval of this Item**

Item\_\_\_\_\_

Prepared by Grace Hutchinson

Commissioner\_\_\_\_\_

Approved by Kathy Kirk

**RESOLUTION AMENDING THE CONTRACT WITH DIEBOLD ELECTION SYSTEMS, INC. FOR THE PURCHASE OF THE ACCUVOTE TSX VOTING SYSTEM AND THE ELECTRONIC POLL BOOK AND VOTER VERIFIABLE PAPER AUDIT TRAIL APPROVED BY RESOLUTION 38 ADOPTED MARCH 13, 2006 TO REALLOCATE FUNDS ORIGINALLY APPROPRIATED SPONSORED BY COMMISSIONER DEIDRE MALONE**

---

**WHEREAS,** The Shelby County Election Commission adopted a resolution on July 8 , 2008 recommending that the Shelby County Board of Commissioners amend the resolution adopted as item #38 on March 13, 2006 for the purchase of the Accuvote TSX voting system, the Electronic Poll Book and the Voter Verifiable Audit Trail in order to reallocated funds appropriated for the Voter Verifiable Audit Trail for the purchase of additional Electronic Poll Books, said resolution is attached hereto and incorporated herein by reference; and

**WHEREAS,** The Election Commission is requesting County Commission approval of an amendment to the contract between Shelby County Government and Diebold Elections Systems, Inc. to reallocate funds originally specified for the purchase and installation of a Voter Verifiable Paper Audit Trail to allow the purchase of additional Electronic Poll Books; and

**WHEREAS,** Funds were appropriated for the total project by resolution #38 on March 13 2006 by the Shelby County Board of Commissioners from Capital Improvement Funds in an amount not to exceed \$4,213,860.26 for the Accuvote TSX Voting System and \$2,245,353.15 for the Electronic Poll Book and Voter Verifiable Paper Audit Trail;

**WHEREAS,** The Election Commission is requesting the reallocation of funds in the amount of \$677,500 earmarked for the purchase of the Voter Verifiable Paper Audit Trail to purchase additional Electronic Poll Books; and

**WHEREAS,** This reallocation will not require the appropriation of additional funds over and above those appropriated by resolution #38 adopted on March 13, 2006

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That an amendment to the contract between Shelby County Government and Diebold Elections Systems, Inc. to reallocate funds in the amount of \$677,500.00 for the purchase of additional Electronic Poll Books funds and eliminate the purchase of the Voter Verifiable Paper Audit Trail is hereby approved.



**BE IT FURTHER RESOLVED,** That no additional capital funds will be required over and above those originally appropriated by Resolution #38 adopted on March 13, 2006.

**BE IT FURTHER RESOLVED,** That the Mayor and agents of Shelby County Government are hereby authorized to execute any and all documents required to implement this action upon approval by the Shelby County Board of Commissioners.

**BE IT FURTHER RESOLVED,** That the Mayor and the Director of the Division of Administration and Finance are hereby authorized to issue their warrant or warrants for the purposes contained in this resolution and to take proper credit in their accounting therefore.

\_\_\_\_\_  
A C Wharton, Jr., Mayor

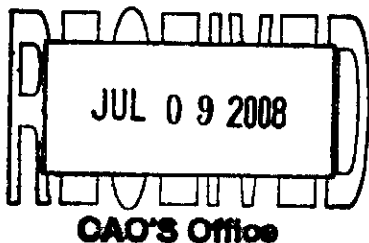
Date:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED:\_\_\_\_\_

**PROPOSED  
VOTING SYSTEMS AGREEMENT  
BY AND BETWEEN  
SHELBY COUNTY, TENNESSEE  
AND  
DIEBOLD ELECTION SYSTEMS, INC.**



3/16 | 2006



P.O. Box 1019  
 Allen, TX 75003  
 469-675-8990  
 800-433-8683 (VOTE)  
 Fax (214) 383-1596

## Voting System Agreement





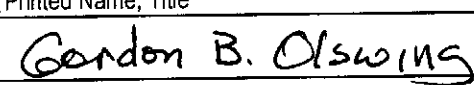


<b>CUSTOMER:</b>	<b>SHELBY COUNTY, TENNESSEE</b>	<b>DIEBOLD ELECTION SYSTEMS, INC.</b>
<b>Addresses For Notices and Billing:</b>	(1) 157 Poplar Avenue, Suite 109 Memphis, TN 38103 Attn: Contracts Administrator of Elections with a copy to: (2) 160 N. Main St., Suite 550 Memphis, TN 38103 ATTN: Contracts Administrator	P.O. Box 1019 Allen, TX 75013 Overnight Deliveries: 1253 Allen Station Pkwy Allen, TX 75002 Attn: Contracts Department
<b>Contacts:</b>	(1) Administrator of Elections, James Johnson (2) Contracts Administrator, Pamela Skelton	Yolanda Hawkins, Contracts Department Sales Representative Barry Herron
<b>Phone:</b>	(1) 901/545-4127 (2) 901/545-4362	469/675-8990
<b>Fax:</b>	(1) 901/545-3676 (2) 901/545-5739	214/383-1596
<b>Email:</b>	(1) pamel.skelton@shelbycounty.tn.gov (2) Johnso-J@co.shelby.tn.us	yhawkins@dieboldes.com

Diebold Election Systems, Inc. ("DESI") and Shelby County, Tennessee ("Customer" and, together with DESI, the "Parties") hereby enter into this Voting System Agreement ("Agreement") as of the date of the last signature set forth below (the "Effective Date"). This Agreement consists of this "Signature Page," the below Terms and Conditions, and the following exhibits, each attached hereto and incorporated herein by this reference as if set forth herein full:

- Exhibit A – Payment Schedule
- Exhibit B – Software License and Maintenance Services Schedule
- Exhibit C – Hardware Warranty Services Schedule
- Exhibit D – Listing Of Components Being Purchased And Pricing Schedule
- Exhibit E – Delivery Schedule
- Exhibit F – Voter Outreach Deliverables, Budget, Schedule and Plan
- Exhibit G – Diebold Letters of Clarification
- Exhibit H – Diebold Election Systems Response To RFP #06-009-14

- Exhibit I – RFP #06-009-14 Election Commission Direct Recording Electronic and Mail-In Absentee Voting System Project
- Exhibit J – Master Preferred Escrow Agreement and Documents Related Thereto

The parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

		<b>DIEBOLD ELECTION SYSTEMS, INC.</b>	
	3/16/06		3/15/06
Authorized Signature	Date	Authorized Signature	Date
AC Wharton, Jr. Mayor		Steve Moreland on behalf of Dave Byrd, President	
Printed Name, Title		Printed Name, Title	
	3-16-06		3-15-06
Authorized Signature	Date	Authorized Signature	Date
Pamela Skelton, Contracts Administrator		Charles R. Owen, Division Counsel	
Printed Name, Title		Printed Name, Title	
			
Authorized Signature	Date		
	3/16/06		
Assistant County Attorney			
Printed Name, Title			
			
Authorized Signature	Date		
Brook Thompson, Tennessee State Election Coordinator			
Printed Name, Title			

## 1. Definitions

1.1. "DESI Hardware" means hardware manufactured by DESI and delivered by DESI hereunder.

1.2. "DESI Software" means software and firmware owned by DESI and licensed by DESI hereunder, in object code form, including all documentation therefore.

1.3. "Effective Date" has the meaning set forth in the Signature Page.

1.4. "Specifications" means descriptions and data regarding the features, functions and performance of the DESI Hardware and/or DESI Software, as set forth in user manuals or other applicable documentation, and DESI's response to the Customers RFP and any clarification correspondence signed by an authorized representative of DESI and delivered to Customer.

1.5. "System" means, collectively, the DESI Software, DESI Hardware and any Third-Party Products provided hereunder.

1.6. "Third-Party Products" means any software or hardware obtained from third-party manufacturers or distributors and provided by DESI hereunder.

1.7. "Warranty Period" means the period beginning on the Effective Date and ending on November 30, 2008, unless otherwise shortened or extended by these Terms and Conditions.

1.7.1 Should any item or component of DESI Hardware, DESI Software or Third Party Products be delivered later than the delivery dates set forth at Exhibit E hereto, the Warranty Period for said item shall be extended and continue for a number of days past November 30, 2008, equal to the number of days past the scheduled delivery date that the item is both actually delivered and accepted by the Customer.

1.7.2 Subject to Section 1.7.3, if a written notice of non-acceptance, which is supported by documentation identifying in detail the reasons for such non-acceptance, is received by DESI from the Customer within 30 days of the date of delivery, "acceptance" is deemed to occur as of the date the stated and reasonably supported reason for non-acceptance is cured.

1.7.3 Should the System (or any portion thereof) not function in accordance with DESI Specifications, and its representations and warranties expressly set forth in these Terms and Conditions in respect to an election, including absentee voting, early voting, election day and/or post election day activities, the actual date of delivery for the System (or the portion thereof) shall not occur until such date the System functions and operates in accordance with DESI Specifications and its representations and warranties expressly set forth in these Terms and Conditions as same relate to an election. In such circumstance, the Warranty Period for the System (or portion thereof) shall be extended and continue for a number of days past November 30, 2008, equal to the number of days past the scheduled delivery date that the System functions in accordance with DESI Specifications and its representations and warranties expressly set forth in these Terms and Conditions. The parties acknowledge the first election in which the System (or a portion thereof) will be used is the August 2006 county wide election.

1.7.4 The Customer shall send notice to DESI of the System or portion thereof not functioning or operating in accordance with DESI Specifications within five (5) business days of becoming aware of same.

1.7.5 DESI will promptly repair or replace any non-conforming delivery, and Customer will promptly inspect, and notify DESI within five (5) days of such repair or replacement by DESI.

1.7.6 Should any component of the System be delivered and accepted by Customer after November 30, 2006, the Warranty Period for such component shall be for a period of two (2) years to be shortened or extended as contemplated by the terms and conditions of this Agreement.

1.8 "RFP" means RFP #06-009-14, Election Commission Direct Recording Electronic and Mail-In Absentee Voting System Project whereby the Shelby County Election Commission solicited proposals from qualified vendors to develop and implement an integrated, automated voting system for Shelby County, Tennessee, including all necessary hardware, software, maintenance and support. This voting Systems Agreement by and between DESI and

Customer arises from this RFP #06-009-14. The foregoing RFP is attached hereto as Exhibit H and is incorporated herein by reference.

1.9. "Total Initial Investment" means the total purchase price for the DESI products and services including Third Party Products set for in Exhibit D.

2. **Term.** This Agreement is effective as of the Effective Date and, unless earlier terminated under Section 13, expires on November 30, 2008; provided that:

2.1 The Terms and Conditions specified herein shall survive and continue past the expiration date by the same number of days the Warranty Period continues past November 30, 2008, pursuant to Section 1.7 (and its subsections) of this Agreement.

2.2 Exhibit B (Software Licenses and Maintenance Services Schedule) and the terms and conditions specified therein will survive any expiration or termination of this Agreement for the duration of the Warranty Period and all applicable Software Renewal Terms (as defined in Exhibit B).

2.3 Exhibit C (Hardware Warranty Services Schedule) and the terms and conditions specified therein will survive any expiration or termination of this Agreement for the duration of the Warranty Period and all applicable Hardware Renewal Terms (as defined in Exhibit C).

2.4 Sections 6 (Payment) (to extent of any payments still due) and 11 (Confidential Information) will survive any expiration or termination of this Agreement in accordance with their respective terms.

2.5 In addition to the foregoing, terms of this Agreement that do not survive expiration or termination will nonetheless be effective in determining the Parties' rights and obligations for conduct or events taking place before such expiration or termination.

### 3. **DESI's Responsibilities**

3.1. DESI shall timely supply and timely deliver to Customer and Customer shall timely receive the DESI Hardware, DESI Software, Third Party Products, and Services identified at Exhibit D hereto and all other instructions, documentation, materials and license, rights, elements and components described in the other Exhibits hereto, and any other goods, right, element or component required to comply with this Agreement. The DESI Hardware, DESI Software, Third Party Products, and Services should be delivered to Customer at locations designated by Customer no later than the dates of delivery set forth in the Delivery Schedule set forth in Exhibit E. DESI acknowledges that the Delivery Schedule is critical and that any delay in such Delivery Schedule will result in a material breach of this Agreement.

3.1.1. Notwithstanding the above covenant or other Terms and Conditions herein, Customer acknowledges and understands that should this Agreement not be fully and lawfully approved by Customer on or before March 17, 2006, DESI may not timely meet its responsibilities and obligations as they relate to the May 2, 2006 election

("collectively the May 2, 2006 election obligations"). Accordingly, DESI shall be released from said May 2, 2006, election obligations and have no liability to Customer for its failure to comply with such May 2, 2006 election obligations. This release shall relate only to the May 2, 2006 election obligations and not the August, 2006 election obligations as may be set forth.

3.1.2. The System and related services for use by Customer shall comply with the requirements of the federal Help Vote Act (HAVA).

3.1.3 The System provided shall have been certified for use in the State of Tennessee. The parties acknowledge that the Express Poll 4000 – Electronic Poll Book (including ancillary items) and the Voter Verifiable Paper Audit Trail (including carry cases and ancillary items) have not been certified for use in the State of Tennessee. Notwithstanding, any other provision herein, Customer shall have no obligation to purchase or pay for such item, unless Customer issues a purchase order for the Express Poll 4000- Electronic Poll Book or the Voter Verifiable Paper Audit Trail products. Furthermore, Customer shall have no obligation to purchase or pay for any other item which requires certification but has not been certified. In the event that the Express Poll 4000-Electronic Poll Book and/or the Voter Verifiable Paper Audit Trail products reference above are certified by the State and the Customer decides to purchase such products, the price for such products shall remain fixed for a period of four years from the Effective Date of this Agreement; however, installation services for these products shall be the then current fee for such installation services at the time the above products are purchased. DESI will ensure that the foregoing products are compatible, at no additional cost to the Customer, if the products are purchased within the four year term specified above.

3.1.4. The System provided by DESI shall in addition to being HAVA compliant, at a minimum comply with the statements, representations and disclosures set forth in its October 17, 2005 response to the RFP as addressed to Sybille Nobile (the "Response To RFP") as said Response To RFP was revised or amended by these terms and conditions, by any other Exhibits hereto, by the letters dated December 5 and 12, 2005, (copies attached hereto and set forth in Exhibit F, along with the subsequent clarifications to DESI's Proposal submitted on December 5, 2005 set forth in Exhibit F.

3.2. DESI subject to its May 2, 2006 election obligations and other expressed specific obligations set forth in these Terms and Conditions shall deliver the components of the System at such places and times as set forth in the project

plan adopted by the parties within 30 days after the Effective Date.

3.3. DESI shall provide the licenses, maintenance and support specified in Exhibit B during the Warranty Period and all Software Renewal Terms (as defined in Exhibit B).

3.4. DESI shall provide the hardware warranty services specified in Exhibit C during the Warranty Period and all Hardware Renewal Terms (as defined in Exhibit C).

3.5. DESI shall appoint a customer support representative, who will serve as a first point of contact with Customer, be authorized to make day-to-day decisions relating to this Agreement and have access to DESI's management for other decisions. DESI acknowledges that the customer support representative is to be appointed by a time and date as is necessary to comply with its May 2, 2006 election obligations.

3.6. DESI shall deliver all System components and perform all services in a professional, workmanlike manner, conforming to the highest professional and technical guidelines and standards of its industry and taking into account the fundamental and important public function for which its components and services are provided.

#### 4. Customer's Responsibilities

4.1. Customer shall provide DESI with physical accommodations reasonably required for DESI to perform its obligations, including premises access, electrical power, data connectivity, heat and air conditioning. In particular, the general requirements include the provision of a 20 amp circuit, 110 volt with no more than 16 units per circuit for charging purposes. Other physical accommodations are those set forth and disclosed in Items 1. and 3. of Section 6.7, page 115 and item 5, page 55 of the Response To RFP attached hereto at Exhibit H.

4.2. Customer shall provide information and access to personnel reasonably required for DESI to perform its obligations. DESI reasonably requires Customer to provide a Project Manager as otherwise set forth in this Agreement; 4 persons per 200 units of the AccuVote®<sup>1</sup> TSX equipment for acceptance testing at time of delivery; and 2 persons for logic and accuracy testing. Such a person when provided shall be available for one continuous week period during normal business hours. Said persons should generally be able to read and understand written instructions to them and be able to lift 50 lbs.

4.3. Customer shall appoint a project manager, who will serve as a first point of contact with DESI, be authorized to make day-to-day decisions relating to this Agreement and have access to Customer's authorized officials for other decisions.

5. **Title and Risk of Loss of DESI Hardware.** Title and risk of loss for each item of DESI Hardware provided by DESI under this Agreement will pass to Customer on delivery. If Customer cannot take delivery at the agreed time or site, DESI may deliver the DESI Hardware to a

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<sup>1</sup> AccuVote is a registered trademark of Diebold Election Systems, Inc. (ALL RIGHTS RESERVED)

Customer's possession for purposes of passage of title and risk of loss. However, delivery will not diminish any rights Customer has pursuant to this Agreement, including rights to repairs and replacements under applicable warranty and maintenance terms. Upon passage of title to the Hardware from DESI to Customer, Customer shall have the unrestricted right to transfer or sell such Hardware to another third party election jurisdiction. However, the sale or transfer of such Hardware as provided herein does not convey any right upon the Customer to transfer the Software License and Maintenance Services Schedule to such third party. Such third party will be required to obtain a Software License and Maintenance Agreement directly from DESI for the use of the DESI Software in conjunction with the Hardware acquired from the Customer. Customer shall be under no obligation to determine or confirm the third party's Software License or Maintenance Services arrangements. Customer shall have the unrestricted right to acquire such Hardware from a third party who has lawfully acquired such Hardware. In the event Customer purchases any additional units of Hardware from such third party, Customer is required to acquire the Software License from DESI (and DESI is required to provide the Software License to Customer) on a prorata basis equal to the number of additional units purchased by Customer. Should Customer acquire a Maintenance Fee Schedule from DESI for its Hardware Units purchased from DESI, Customer may purchase the Maintenance on a pro-rata basis equal to the number of additional units purchased. DESI acknowledges that Customer may purchase additional Hardware units without having to purchase a Software License so long as said units are used as parts to service and repair Hardware Units purchased from DESI. Customer shall timely notify DESI in writing of its sale and/or purchase of Hardware Units (except those units acquired by Customer for parts and repair purposes). Said notice should disclose the number of units sold or purchased and the identity and contact information of the third party selling or purchasing the units. DESI agrees that it will grant a license to the third party election jurisdiction purchasing the Hardware from Customer under its then current licensing terms.

## **6. Payment.**

6.1 Customer shall pay DESI the amounts specified in Exhibit A at the times specified therein. Customer is responsible for all sales, excise, personal property or other taxes or duties on the amounts paid or products or services provided under this Agreement. If Customer is exempt from such taxes or duties, Customer shall provide DESI with a tax exemption certificate if such a certificate exists. Customer hereby grants DESI a first priority security interest in the DESI Hardware and any proceeds thereof, effective until Customer has fully paid the amounts specified for the DESI Hardware in Exhibit A. Customer shall execute and deliver UCC filings and other documents DESI reasonably requests to perfect this security interest.

6.2 Notwithstanding the above, this Agreement is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this

Agreement are not appropriated by Shelby County Government for any of its fiscal periods during the term of this Agreement, then this Agreement will be terminated. In the event of such termination, DESI shall be entitled to receive just and equitable compensation for any satisfactory work performed and/or components delivered and accepted by Customer as of the termination date.

6.3 Customer is not and will not be responsible for any taxes levied on DESI as a result of the execution, delivery or performance of this Agreement. DESI shall pay and discharge any and all taxes in a timely manner.

## **7. Insurance**

7.1 Customer Insurance. The parties acknowledge that the Customer is a governmental entity and as such is allowed to maintain a program of self insurance that is reasonably adequate to cover its liability to DESI under the terms and conditions of this Agreement.

7.2 During the term of this Agreement, DESI will maintain in full force and effect insurance policies providing the types and minimum coverages specified below covering DESI's acts and omissions in performing this Agreement.

7.2.1 Commercial general liability insurance, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate for personal injury and property damage.

7.2.3 Automobile liability insurance covering any auto used by DESI to perform services under this Agreement, with limits of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate for bodily injury and property damage.

7.2.4 Worker's Compensation insurance, with limits of not less than those required by statute, and employer's liability insurance, with a combined single limit of not less than One Million Dollars (\$1,000,000).

7.2.5 Certificates of insurance evidencing the above coverage's will be furnished to Customer before commencing services under this Agreement. The certificates will provide for not less than fifteen (15) days' prior notice to Customer of any policy cancellation or non-renewal.

7.2.6 The required coverage's set forth above do not limit DESI's obligations with respect to performance under this Agreement.

## **8 Testing and Acceptance**

8.1 Within ten business days after installing System components, DESI will commence unit testing under protocols designed to confirm performance in compliance with Specifications. Acceptance of units will occur on the earlier of (a) Customer's delivery of a written certificate of acceptance and (b) 30 days after the scheduled start of unit testing if testing is prevented or delayed by Customer's failure to meet obligations under this Agreement.

8.2 No later than ten business days after System installation is complete, DESI will conduct System testing under protocols designed to confirm the System's performance in compliance with all System Specifications. Acceptance of the System will occur on the earliest of (a) Customer's delivery of a written certificate of System acceptance, (b) Customer's use of the System in a national election, (c) 30 days after the scheduled start of System testing if impeded or prevented by Customer's failure to respond or perform its obligations and (d) 120 days after the scheduled start of System testing, unless, before then, Customer has notified DESI in writing of its intent to terminate this Agreement for cause under Section 13. Customer will not withhold acceptance due to a failure to conform to Specifications in any immaterial respect, provided DESI promptly delivers a remedial plan for such non-conformity.

8.3. Notwithstanding the above or other terms and conditions of this Agreement, except for the terms and conditions of Section 3.1.1 relating to Customer's approval of the Agreement on or before March 17, 2006, DESI acknowledges that Customer requires the following to timely occur, and that a failure of any below event to occur on the date specified will result in a material breach of this Agreement:

8.3.1\* Customer is to receive, have in proper place and use for demonstration purpose only, 400 units of the AccuVote – TSX hardware and ancillary components for demonstration and training purposes at and during the May 2, 2006 election;

8.3.2\* Customer is to commence, perform and complete its voter education and outreach program with DESI's assistance. The schedule of training and outreach program efforts, DESI's general obligations, duties and responsibilities regarding the voter education and outreach program, the costs of said program to Customer and other program details are set forth at Exhibit F hereto. Notwithstanding the foregoing, and for avoidance of any doubt or conflict, the Parties agree and acknowledge that DESI's sole obligation with regard to Customer's voter education and outreach program shall consist of the development of a voter education and outreach plan and creation of various items including but not limited to brochures, videos, and education materials necessary to implement and carry out the plan.

8.3.3 Customer is to commence mailing of the (August 3, 2006 election) absentee voting documents using the new System no later than June 19, 2006;

8.3.4 Customer is to use the new System to tally the (August 3, 2006 election) absentee ballots;

8.3.5 Customer is to receive, use and have in proper place 200 fully functioning and operating units of the

AccuVote – TSX hardware and ancillary components (including software) at the commencement of and during the entirety of early voting, which early voting is to commence July 13, 2006, and run for a period of twenty (20) consecutive days. Said 200 units may be the same units as those previously delivered for the May 2, 2006 election early voting, if any.

8.3.6 Customer is to receive use and have in proper place 1500 fully functioning and operating units of the AccuVote – TSX hardware and ancillary components (including software) at and during the August 3, 2006 election. Said 1500 units may include the 200 units delivered for early voting purposes and the 400 units previously delivered and used as demonstration units. In addition all 1500 units and components necessary to commence acceptance testing shall be delivered to Customer at the location designated by Customer no later than June 1, 2006 with acceptance testing to commence promptly after delivery.

8.3.7 Customer shall receive, have in proper place and otherwise be able to utilize all System components as necessary to timely perform and complete all lawful August 3, 2006 absentee voting, early voting election day activities and all lawful August 3, 2006 post election activities including but not limited to tabulation of election results, audit of election results, re-count of election results and reporting of election results to governmental authorities.

8.3.8 Customer is to receive all System components as necessary to timely and successfully complete the activities set forth above at Sections 8.3.1 – 8.3.7;

8.3.9 All diagnostic, acceptance. Logic and accuracy preparation, planning and testing is to be performed and completed as necessary to timely and successfully complete the activities set forth above at Sections 8.3.1 – 8.3.7;

8.3.10 All GEMS Database or GEMS Server upgrades, modifications, patches, testing and audits are to be completed as necessary to timely and successfully complete the activities set forth above at Sections 8.3.1 – 8.3.7 and;

8.3.11 Customer shall receive from DESI all training as is necessary to timely and successfully complete activities set forth above at Sections 8.3.1 – 8.3.7

8.4 Accordingly, DESI shall subject to the terms and conditions of Section 3.1.1 herein regarding Customer approval of the Agreement, deliver to Customer all System components and services and perform all work as is necessary for Customer to timely and successfully complete the activities set forth above at Section 8.3.1 – 8.3.8.

## **9 Warranties**

9.1. Warranty Duration. The following warranties will apply to all DESI Software and DESI Hardware during the Warranty Period. Thereafter, such warranties will apply to all DESI Software during



all Software Renewal Terms and to all Warranted Hardware (as defined in Exhibit C) during all Hardware Renewal Terms.

9.2. DESI Software. DESI warrants that DESI Software will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications, so long as such DESI Software is operated with DESI Hardware and with Third-Party Products approved by DESI for use with the DESI Software.

9.3. DESI Hardware. DESI warrants that the DESI Hardware will perform free of defects that would prevent the System from operating in conformity in all material respects with its Specifications as same are set forth in DESI's Response To RFP or its other written representations to Customer, so long as such DESI Hardware is operated with DESI Software and with Third-Party Products approved by DESI for use with the DESI Hardware.

9.4. Third-Party Products. The warranties in Sections 9.2 and 9.3 do not apply to any Third-Party Products, except that:

9.4.1. To the extent permitted by the manufacturers of Third-Party Products, DESI shall pass through to Customer all warranties such manufacturers make to DESI regarding the operation of such Third-Party Products; and

9.4.2. DESI warrants that all components of the DESI Software and DESI Hardware will interface and function properly with the Third-Party Products so long as such Third-Party Products operate in compliance with all applicable manufacturers' warranties.

9.4.3. DESI warrants that regardless of any Third Party Products warranty, the DESI System delivered to Customer, including the Third Party Products will perform in accordance with the DESI Specifications during the Warranty Period and the DESI representations and warranties expressly set forth in these Terms and Conditions.

9.5 Certification. DESI warrants that each unit of voting equipment provided to Customer hereunder is certified by the Tennessee Secretary of State.

9.6 DESI warrants that each component of DESI Hardware, DESI Software and Third Party Products provided to Customer hereunder complies with the Help America Vote Act.

9.7 DESI warrants that each component of DESI Hardware, DESI Software, and Third Party Products provided to Customer hereunder will be fit for the purpose of preparing for elections, conducting elections and/or auditing election results.

9.8 DESI warrants that all products and components purchased under this Agreement, except for the additional two (2) refurbished optical scan units that will be

new and that all products and components will be free from defects in material and workmanship.

9.9 DESI warrants the System and every individual component will be, and will operate, in all material respects in accordance with its Response to RFP attached hereto as Exhibit H, Clarifications To Response To RFP attached hereto as Exhibit G.

9.10 DESI is a corporation duly organized, validly existing, and in good standing under the laws of its domicile. DESI has all requisite corporate power and authority to own, operate, and dispose of its property.

9.11 DESI has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. This Agreement and the obligations contemplated hereby have been duly and validly authorized by all necessary action on part of DESI, and this Agreement constitutes a legal, valid and binding obligation of DESI, enforceable in accordance with its terms. The persons executing this Agreement on behalf of DESI have actual authority to bind DESI.

9.12 DESI will enter into no agreement, the execution or performance of which would violate or interfere with this Agreement.

9.13 No Third Party act is required to enable DESI to enter into this Agreement or to perform it, or if so, such consent has been revealed in writing to Customer and will be obtained before time of performance.

9.14 DESI has either by itself or with the assistance it reasonably expects to receive from subcontractors, the facilities, equipment, authorizations, and know-how to perform this Agreement.

9.15 There is no pending or known potential claim, planned action or other event of any nature that could individually or together materially impair DESI's ability to perform this Agreement. Without limiting the generality of this representation, DESI is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not presently contemplate filing any bankruptcy petition, and is not aware that any person plans to file an involuntary petition in bankruptcy against it, or if aware of such petition, represents that such a petition will not materially effect its ability to timely carry out its duties, responsibilities and obligations under this Agreement.

9.16 DESI warrants that, no part of the System contains or will contain any code designed to disable a computer program automatically with the passage of time. Furthermore, so long as Customer is not in breach of its licensee obligations hereunder, Customer has been notified in writing of the breach, and has the opportunity to cure the breach in accordance with the Terms and Conditions herein. DESI or licensor will not intentionally disable or interrupt a software program licensed to Customer. This does not include software routines designed to permit access to a licensee's computer system for purposes of maintenance or technical support, provided DESI has given written notice and description of the

attributes of such code to Customer and has Customer's written acquiescence.

9.17 DESI warrants to its knowledge, no part of the System contains or will contain any virus, Trojan horse, worm or similar software routines.

9.18. No Other Warranties. DESI DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES NOT SET FORTH IN THIS AGREEMENT (INCLUDING THE EXHIBITS HERETO), WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

## 10. Indemnification

10.1 If notified promptly in writing of any action brought against Customer alleging that Customer's use of the DESI Software or DESI Hardware infringes a United States patent, copyright or trademark ("Claim"), DESI will defend the Claim at its expense and pay any costs and damages awarded against Customer; provided that DESI has sole control of and Customer's reasonable cooperation in the defense or settlement of the Claim. This indemnity will not apply to Claims arising from use of the DESI Software outside the scope of the license granted to Customer, use of the DESI Software or DESI Hardware in combination with Third-Party Products (other than those approved by DESI or set forth in the Specifications) or modification of the DESI Software or DESI Hardware not performed or provided by DESI, to the extent such use, combination or modification is the cause of such Claim.

10.2 If a Claim results in an injunction against Customer's use of any component of DESI Software or DESI Hardware, or if DESI reasonably anticipates such an injunction, DESI will procure for Customer the right to continue using the component, replace the component or modify the component to avoid the Claim while retaining substantially the same functionality.

10.3 DESI shall indemnify, defend, save and hold harmless the Customer, and its elected officials, officers, employees, agents, assigns and instrumentalities from and against any and all claims, liability losses or damages related to Title VII and 42 USC 1983 prohibited acts arising out of or resulting from the actions or omissions directly attributable to DESI in its performance under this Agreement. This indemnification shall survive the termination or conclusion of this Agreement.

10.4 DESI expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by DESI shall in no way limit the responsibility to indemnify, defend, save and hold harmless the Customer as herein provided.

10.5 Customer has no obligation to provide legal counsel or defense to DESI or its subcontractors in the event a suit, claim or action of any character is brought by any person not a party to this Agreement against DESI as a result of or relating to performance of the services or obligations under this Agreement.

10.6 DESI will assume all risk of injuries to property or persons, including death resulting or arising from DESI's negligence, willful and/or intentional misconduct, DESI does hereby agree to protect indemnify, and hold harmless the Customer, participating jurisdictions, and agencies against any and all actions, claims, demands or liabilities for death, personal injury or property damage. In addition, DESI shall pay all expenses, which the Customer may incur in the investigation and/or defense of any such claim, including reasonable counsel fees and court costs.

11. **Limitation of Liability.** As to claims and matters between the parties, and except as to those matters set forth in Section 10, DESI will not be liable under this Agreement to Customer for (1) consequential, special, punitive or incidental damages or (2) compensatory damages in excess of the total of all amounts payable under this Agreement during the 12-month period preceding the event or events giving rise to liability.

## 12 Confidential Information.

12.1 Neither Party will use or disclose the other Party's Confidential Information without the other Party's prior written consent. "Confidential Information" means, as to DESI, the DESI Software and, as to either Party, any information designated as confidential by the Party when or before it is disclosed. This paragraph does not apply to information (a) after it becomes publicly known through no fault of the receiving Party, (b) already rightfully in the receiving Party's possession when received, (c) developed by the receiving Party without the use of the other Party's Confidential Information or (d) required to be disclosed by law so long as the other Party is given prompt notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure. Each Party acknowledges that its breach of this Section 12 may cause the other Party substantial and irreparable harm for which the other Party would be entitled to equitable relief in addition to any available legal remedies. Each Party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief.

12.2-The Customer reserves the right to have an independent contractor audit the software applicators to obtain reasonable assurance pertaining to the function, audit, ability and related controls of the application

13. **Force Majeure.** DESI's obligations hereunder will be suspended so long as compliance is impeded or prevented by causes beyond DESI's reasonable control, which may include acts of God, embargoes, acts of war (including terrorist attacks), labor disturbances and acts or regulations of governmental entities. DESI should give written notice of any suspension promptly upon its becoming aware of same.

14. **Termination for Cause.** If either Party materially breaches this Agreement and does not cure the breach within 30 days after receiving

written notice of the breach from the non-breaching Party, the non-breaching Party may terminate this Agreement as of a termination date specified in that notice or a subsequent notice delivered within such 30-day period. If the breach cannot be completely cured within the 30-day period, no default will occur if the Party receiving the notice in good faith begins curative action within the 30-day period and thereafter proceeds with diligence and in good faith to cure the breach as soon as practicable.

## **15. Miscellaneous**

**15.1. Assignment.** Neither Party may assign any rights or delegate any obligations under this Agreement without the prior written consent of the other Party; provided that DESI may subcontract Services upon 30 days' prior written notice to Customer. Any such subcontract shall in no way whatsoever release DESI from its duties, responsibilities and/or obligations under this Agreement. Any attempted assignment or delegation in violation of this Section 14.1 will be null and void.

**15.2. Severability.** If any term of this Agreement is held to be unenforceable, the other terms of this Agreement will be enforced to the fullest extent permitted by law.

**15.3. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

**15.4. Governing Law.** This Agreement will be construed under the laws of the State of Tennessee; and the state and federal courts within Shelby County, Tennessee shall have exclusive jurisdiction for all actions to enforce or otherwise arising from this Agreement.

**15.5. Waiver.** No waiver or failure of a party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.

**15.6. Notices.** All notices under this Agreement will be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the addresses shown on the Signature Page or such other address as may be specified by either Party to the other Party in compliance with this Section 14.6. Notices will be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier and four days after such mailing by U.S. mail.

Each party hereto shall promptly notify the other of any claim or suit made or filed against the party or its subcontractors regarding any matter resulting from or related to the party's performance of responsibilities, obligations and duties under this Agreement and will cooperate, assist and consult the other in the defense or investigation thereof.

**15.7. Interpretation.** This Agreement, including all Exhibits, is the complete and final expression of the Parties' agreement regarding its subject matter and supersedes all prior or contemporaneous communications or agreements, written or oral, by the Parties regarding such subject matter. In the event of any conflict between these Terms and Conditions and any provisions set forth in any other part of this Agreement, these Terms and Conditions will prevail. In the event of a conflict between any Agreement document, the order of precedence is as follows: (1) these Terms and Conditions; (2) Exhibit J documents; (3) Exhibits A, B, C, D, E, and F; (4) 3 Clarifications To The Response To RFP at Exhibit G; (5) the Response To RFP; and (6) the RFP. No amendment or supplement to this Agreement is effective unless in writing and signed by both Parties' authorized representatives. The word "include" (or any of its derivatives) is deemed to be followed in all contexts by the words "without limitation." Headings are included for convenience and will be ignored in interpreting this Agreement.

**15.8. Conflict of Interest.** DESI warrants that no fee, payment or compensation has been or will be paid directly or indirectly to any officer or employee of Customer as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to DESI in connection with any work contemplated, performed or to be performed relative to the Agreement.

## **16. General Compliance With Law.**

**16.1** DESI certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its responsibilities, obligations and duties under this Agreement.

**16.2** DESI is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of its responsibilities, obligations and duties. The preceding sentence shall include, but is not limited to compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements and the Americans with Disabilities Act (ADA).

**16.3** DESI hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws, which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of DESI on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

**17. Most Favored Pricing.** DESI agrees that all System post Warranty Period and/or post Agreement termination fees, prices and charges for software licensing, equipment repair and maintenance, and equipment repair and maintenance programs, substitution or replacement of equipment and software and the like offered, imposed or charged to Customer shall not exceed those offered or imposed or performed with respect to substantially similar services or products sold to other Customers of DESI, under substantial similar terms, substantial similar conditions, substantial similar quantities, and substantially similar configuration of the System hereunder.

**18. Escrow Agreement.** Customer shall become a beneficiary under DESI's existing master escrow agreement with Iron Mountain, Inc., entitled to receive the source code to DESI's software and firmware upon the occurrence of certain release events as described in the escrow agreement. The Form of Master Preferred Escrow Agreement and related documents including the Preferred Beneficiary Acceptance Form are collectively attached to this Agreement as Exhibit J.

## **Exhibit A**

## Shelby County Election Commission

### Contract Payment Schedule

**Payment Schedule Pre-requisite** – Payment for the system will be due upon the availability of HAVA funding provided by the Office of the Secretary of State, Tennessee State Coordinator of Elections, and in accordance with the milestone table below. Following the provision thereof, all invoices will be prepared and sent to Shelby County within thirty (30) days of each milestone completion date, with payment due within thirty (30) days of receipt by Shelby County.

Major Milestone/Contract Deliverable <sup>1</sup>	% of Total Contract Amount	Milestone Payment Amount
Initial Start-up Fee	10	\$ 421,386.03
Completion of the following: <ul style="list-style-type: none"> <li>• Delivery of 400 AccuVote TSX demo units</li> <li>• Delivery of application software</li> <li>• Acceptance and L&amp;A tests</li> <li>• Voter Outreach: <ul style="list-style-type: none"> <li>• Expectations Meeting</li> <li>• Community Event Plan</li> </ul> </li> </ul>	15	632,079.04
Completion of the following: <ul style="list-style-type: none"> <li>• Delivery of 600 AccuVote TSX units</li> <li>• Acceptance and L&amp;A tests</li> <li>• Staff training<sup>2</sup></li> <li>• Voter Outreach: <ul style="list-style-type: none"> <li>• Planned dates for community event demonstrations</li> <li>• Development of website interactive simulation</li> </ul> </li> </ul>	20	842,772.05
Completion of the following: <ul style="list-style-type: none"> <li>• Delivery of 500 AccuVote TSX units</li> <li>• Acceptance and L&amp;A tests</li> <li>• Voter Outreach deliverables through 6/28/06 (See Exhibit F, including Direct and Indirect Outreach Efforts)</li> </ul>	20	842,772.05
Certification of August Primary Election and the following post-election activities: <ul style="list-style-type: none"> <li>• Audit election results</li> <li>• Conduct recount, as required</li> <li>• Prepare Secretary of State abstract &amp; submit</li> <li>• Process any warranty equipment</li> </ul>	20	842,772.05

<sup>1</sup> Deliverables according to the Final Project Plan, jointly developed and agreed to between DESI and the Shelby County Election Commission.

<sup>2</sup> Includes GEMS training and hardware training.

**Shelby County Election Commission**  
**Contract Payment Schedule**

Major Milestone/Contract Deliverable	% of Total Contract Amount	Milestone Payment Amount
Certification of November General Election and the following post-election activities: <ul style="list-style-type: none"> <li>• Audit election results</li> <li>• Conduct recount, as required</li> <li>• Prepare Secretary of State abstract &amp; submit</li> <li>• Process any warranty equipment</li> </ul>	15	632,079.04
<b>TOTAL</b>		<b>\$ 4,213,860.26</b>

The following Fiscal Year 2007 equipment purchases will be included in a separate payment schedule at the time of purchase: <ul style="list-style-type: none"> <li>• ExpressPoll 4000 Electronic Poll Book \$1,367,803.15</li> <li>• Voter Verifiable Paper Audit Trail Modules 677,550.00</li> </ul>	\$ 2,245,353.15
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<sup>3</sup>Only upon certification by the State Coordinator of Elections.

## **Exhibit B**



## EXHIBIT B

## SOFTWARE LICENSE AND MAINTENANCE SERVICES SCHEDULE

1. **Exhibit B Term.** This Exhibit B is effective as of the Effective Date and, if not extended as provided herein, expires on the last day of the Warranty Period. Customer may thereafter extend the effectiveness of this Exhibit B for up to 20 successive one-year renewal periods (each, a "Software Renewal Term") by paying, for each Software Renewal Term, the Annual Software License and Maintenance Fee set forth in Exhibit A of the Agreement at least 30 days before such Software Renewal Term begins. It is agreed between the Parties that any increase in the Software License and Maintenance Fee for any such Software Renewal Term shall not exceed 5% of the then current Software License and Maintenance Fee for the then current Software Renewal Term. The period during which this Exhibit B is in effect is referred to herein as the "Exhibit B Term." On expiration of the Exhibit B Term (a) the licenses granted in this Exhibit B will automatically terminate, (b) Customer shall cease any further use of the DESI Software and (c) DESI may cease performing the maintenance services set forth in this Exhibit B.

2. **Payment.** The Total Initial Investment specified in Exhibit A of the Agreement includes payment in full, for the Warranty Period, for the licenses, maintenance and support described in this Exhibit B. Each Annual Software License and Maintenance Fee constitutes payment in full, for the duration of the applicable Software Renewal Term, for the licenses, maintenance and support described in this Exhibit B. In the event Customer purchases any additional units from DESI or a third party, the Software License (and Maintenance Fee, if any) to be paid by Customer for such units shall be made payable to DESI on a pro-rata basis equal to the number of additional units purchased by Customer.

3. **License to DESI Software.** Subject to the terms of this Exhibit B and the Agreement, DESI grants Customer a non-exclusive license, without the right to transfer or sublicense, to use, during the Exhibit B Term, for the purpose of preparing for and conducting federal, state or local elections, run-offs, referenda and other similar voting events that take place within Shelby County, Tennessee as may be directed by the State's Coordinator of Elections, the numbers of copies specified in Exhibit A of the DESI Software applications identified therein. This license may be exercised by Customer officials, employees and volunteers authorized by Customer to conduct the above-described elections.

4. **Third-Party Products.** Subject to the terms of this Exhibit B and the Agreement, DESI agrees to sublicense any software that constitutes or is contained in Third-Party Products, in object code form only, to Customer for use during the Exhibit B Term as part of the System for the purposes described in Section 3 of this Exhibit B. This sublicense is conditioned on Customer's continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which such software is provided.

5. **No Other Licenses.** Other than as expressly set forth in this Exhibit B, (a) DESI grants no licenses, expressly or by implication, and (b) DESI's entering into and performing the Agreement (including this Exhibit B) will not be deemed to license or assign any intellectual property rights of DESI to Customer or any third party. Without limiting the foregoing sentence, Customer agrees to use each copy of the AccuVote-TSX firmware, or AccuVote-OS firmware, only on the AccuVote-TSX unit, or AccuVote-OS unit, with which the copy is supplied, agrees not to use any DESI Software as a service bureau for elections outside Tennessee and agrees not to reverse engineer or otherwise attempt to derive the source code of any DESI Software.

### 6. DESI Software Maintenance

6.1. During the Exhibit B Term, DESI shall maintain the DESI Software so that it operates in conformity at all times with the warranties set forth in the Agreement. DESI shall correct any reproducible error affecting the DESI Software. Suspected error conditions will be investigated and corrected by DESI personnel at the DESI office to the extent possible. Repair or replacement under this Exhibit B will be the exclusive remedy of Customer for any defects in the operation of the DESI Software.

6.2. If a problem cannot be resolved using remote diagnostics, upon Customer's prior authorization, DESI will send a specialist to the Customer's premises under the following terms:

6.2.1. If the problem lies solely with DESI Software, DESI is responsible for all expenses associated with the resolution of the problem, provided that Customer has incorporated all error corrections or changes to the DESI Software within ten days after receiving them from DESI.


6.2.2. If the problem is due to acts or omissions by Customer or a third party, including by the failure to incorporate all error corrections or changes in a timely manner, Customer is responsible for all fees and expenses at DESI's then-current consulting service rate. Such problems include those that arise from the failure of Third-Party Products, installation of the DESI Software on hardware that was not approved by DESI, or improper use of the DESI Software or the hardware upon which it is installed.

6.3. As is reasonably necessary for DESI to provide maintenance and support, Customer shall provide access to its personnel and premises, be responsible for maintaining all necessary computer hardware (other than Warranted Hardware), communications equipment, telephone lines, cabling and modems, and make available paper, disk packs and other similar supplies.

7. **Enhancements and Upgrades.** During the Exhibit B Term, DESI shall provide Enhancements and Upgrades (each as defined below) to Customer under the following terms and conditions.

7.1. DESI may provide Customer with unsolicited error corrections or changes to the DESI Software that DESI determines from time to time are necessary for proper operation of the System ("Enhancements").

7.2. DESI may release DESI Software improvements that add to or change the functionality characterizing the DESI Software as of the Effective Date ("Upgrades"). Upgrades do not include later released versions of the DESI Software with a higher version number.

 ~~7.1. Customer shall incorporate each Enhancement and Upgrade within ten days after receipt from DESI, unless DESI consents in writing to a delay in such incorporation. Each Enhancement and Upgrade will be, from and after delivery to Customer, licensed to Customer under this Exhibit B and treated for all purposes as part of the DESI Software.~~

~~7.2. Notwithstanding any term of this Exhibit B to the contrary, DESI shall not provide, and shall not be obligated to provide, under this Exhibit B any Update, Enhancement or other software or firmware that has not been fully certified under any and all applicable provisions of the election laws and regulations of the State of Tennessee.~~

**8. Incorporation of Provisions Surviving Expiration or Termination of Term.** Effective upon expiration or termination of the Term of the Agreement, Sections 1 and 8 through 14 of the Agreement will be incorporated in this Exhibit B as if fully set forth herein, and will survive such expiration or termination (along with those specified in Section 2.3 of the Agreement) for the remainder of the Exhibit B Term.

## **Exhibit C**

## EXHIBIT C

## HARDWARE WARRANTY SERVICES SCHEDULE

**1. Exhibit C Term.** This Exhibit C is effective as of the Effective Date and, if not extended as provided herein, expires on the last day of the Warranty Period. Customer may thereafter extend the effectiveness of this Exhibit C for up to 20 successive one-year renewal periods (each, a "Hardware Renewal Term") by paying, for each Hardware Renewal Term, the Annual Extended Hardware Warranty Fee set forth in Exhibit A of the Agreement at least 30 days before such Hardware Renewal Term begins. The period during which this Exhibit C is in effect is referred to herein as the "Exhibit C Term."

**2. Payment.** The Total Initial Investment specified in Exhibit A of the Agreement includes payment in full, for the Warranty Period, for the hardware warranty services described in this Exhibit C. Each Annual Extended Hardware Warranty Fee constitutes payment in full for the hardware warranty services described in this Exhibit C for the duration of the applicable Hardware Renewal Term.

### **3. Warranted Hardware**

3.1. During the Exhibit C Term, DESI shall maintain the items of DESI Hardware identified in Exhibit A and any other items of DESI Hardware for which Customer purchases extended warranty services under this Exhibit C (collectively, "Warranted Hardware"), so that they operate in conformity at all times with the warranties set forth in the Agreement. If any item of the Warranted Hardware fails during the Exhibit C Term to operate in conformity with the warranties set forth in the Agreement, DESI shall fully repair or, at DESI's option, replace the Warranted Hardware. The following conditions apply:

3.1.1. Customer shall bear the shipping costs to return the malfunctioning item of Warranted Hardware to DESI and DESI shall bear the costs for ground-shipping the repaired or replaced item of Warranted Hardware to Customer. Shipping costs are based on ground service rates. If faster shipping service is required, the shipping cost shall be at the Customer's expense.

3.1.2. Customer may request on-site support services. If DESI agrees to provide on-site support services, such services will be provided on a time and material basis.

3.1.3. In special or unusual circumstances, Customer may request to borrow a hardware unit that can serve as a temporary replacement for the malfunctioning item of Warranted Hardware ("Loaner"). DESI may, at its discretion, provide a Loaner for Customer to use for election activity until the covered item is repaired or replaced. DESI and Customer shall agree in advance on the fee for the use of the Loaner.

3.2. For the avoidance of doubt, the following services are among those not covered by the payments identified in Section 2 above, and are available at DESI's then current time and material rates.

3.2.1. The replacement of consumable items such as batteries, paper rolls, ribbons, clock chips, smart cards, floppy disks, and disks on chips.

3.2.2. The repair or replacement of Warranted Hardware damaged by accident, abuse, neglect, improper usage or as a result of service modification by anyone other than DESI and its authorized service representatives.

3.2.3. The repair, refitting or replacement of any DESI Hardware to comply with the changes in any applicable laws or regulations becoming effective after acceptance of such Hardware.

**4. Gaps in Warranty Coverage.** Customer may purchase extended hardware warranty services under this Exhibit C for items of DESI Hardware for which coverage has lapsed. In such case, in addition to payment of the applicable Annual Extended Hardware Warranty Fee, Customer will pay at DESI's then current time and material rates for inspections and repairs required to bring the items of DESI Hardware up to warranty-level standards.

**5. Incorporation of Provisions Surviving Expiration or Termination of Term.** Effective upon expiration or termination of the Term of the Agreement, Sections 1 and 8 through 14 of the Agreement will be incorporated in this Exhibit C as if fully set forth herein, and will survive such expiration or termination (along with those specified in Section 2.3 of the Agreement) for the remainder of the Exhibit C Term.

## **Exhibit D**

**Shelby County Election Commission  
Voting Machine Implementation Project**

**Diebold AccuVote-TSX  
Pricing Schedule\***

Equipment/Service	Qty.	Unit Cost	Extended Cost	Total Cost	Comments
Hardware/Equipment Cost:				\$ 5,647,799.00	
AccuVote-TSX (includes warranty through Nov. 2008, PCMCIA memory card, self enclosed booth, internal battery, absentee ballot tabulation system)	1,500	\$ 3,195.00	4,792,500.00		
Smart Cards/Buttons	6,000	4.00	24,000.00		4 per unit
Battery Packs	3,000	50.00	150,000.00		2 per unit
Visually Impaired Accessories	297	320.00	95,040.00		1 per precinct, plus 5%
Voter Card Encoders	849	395.00	335,355.00		3 per precinct
Backup PCMCIA Memory Cards	1,500	155.00	232,500.00		1 per unit
Precinct Supervisor Cards	566	4.00	2,264.00		2 per precinct
Server	1	15,400.00	15,400.00		
ST100 Central Office Card Encoder	1	150.00	150.00		
PCMCIA Ethernet Cards	5	105.00	525.00		
Administrator Cards	5	8.00	40.00		
Security Key Cards	5	5.00	25.00		
Refurbished Absentee Ballot Scanners	2	0	0		Covered by new equipment warranty
Application Software	1	150,000.00		150,000.00	
Community Outreach Deliverables	1	98,265.00	98,265.00	98,265.00	
Discount (includes trade-in of 200 AccuVote-TS units)				(2,930,000.00)	

\*Supercedes Costs and/or prices as set forth in DESI's Section B Proposal Forms, submitted by DESI in response to RFP#06-009-14.

**Shelby County Election Commission  
Voting Machine Implementation Project**

Equipment/Service	Qty.	Unit Cost	Extended Cost	Total Cost	Comments
Management Fees	1	116,620.26		116,620.26	
Service Expense:				944,340.00	
Project Management Fee	1	394,440.00	394,440.00		2-yr. commitment
Installation Costs	1	182,650.00	182,650.00		
Election Support, 2 years (includes L&A, Election Day server support, 19 Field Rovers)	1	367,250.00	367,250.00		See Delivery Schedule Exhibit E
System Software – Key Card Tool Security	1	10,000.00		10,000.00	
System Software Maintenance – Extended Warranty	1	27,500.00		27,500.00	
Staff Training	1	39,400.00		39,400.00	Includes “Train the Trainer” Classes 2006-2007
Warehouse Racking System:				109,936.00	
4-unit rack	208	336.00	69,888.00		
5-unit rack	48	392.00	18,816.00		
6-unit rack	31	432.00	13,392.00		
5-unit rack (spares)	20	392.00	7,840.00		
<b>Sub-Total Fiscal Year 2006 Costs</b>				<b>\$ 4,213,860.26</b>	
<b>FISCAL YEAR 2007 PURCHASES</b>					
Express Poll 4000: <sup>1</sup>				\$ 1,567,803.15	
Electronic Poll Book devices (includes software, case, barcode wand, stylus, signature pad, training, warranty through Nov. 2008, 2-day staff training):	566	2,950.00	1,669,700.00		

**Shelby County Election Commission  
Voting Machine Implementation Project**

Equipment/Service	Qty.	Unit Cost	Extended Cost	Total Cost	Comments
Spare CF Memory Card Devices	283	58.30	16,498.90		512mb each
Database Conversion Set-up	1	3,500.00	3,500.00		
Acceptance Testing Assistance	1	13,500.00	13,500.00		
Train-the-Trainer	1	3,250.00	3,250.00		
Logic & Accuracy Assistance	2	5,000.00	10,000.00		first 2 elections
County-wide Discount			(162,795.75)		
Shipping			14,150.00		
Voter Verifiable Paper Audit Trail <sup>2</sup> :				677,550.00	
AccuView Print Modules	1,500	350.00	525,000.00		
Carrying Cases	1,500	85.00	127,500.00		
Security Canisters (spares)	1,500	15.00	22,500.00		
Paper Rolls (spares)	1,500	1.70	2,550.00		
<b>Sub-Total Fiscal Year 2007 Costs</b>				<b>\$ 2,245,353.15</b>	
<b>TOTAL CONTRACT COST</b>				<b>\$ 6,459,213.41</b>	

<sup>1</sup>Only upon certification by the State of Tennessee, Coordinator of Elections.

<sup>2</sup> Only upon certification by the State of Tennessee, Coordinator of Elections, which price does not include installation services.



## **Exhibit E**

Draft Shelby County Project Plan<sup>1</sup>

Project Start: Mon 1/9/06  
Project Finish: Mon 9/25/06

## Tasks

ID	Task Name	Duration	Start	Finish	Resource Names	% Complete
1	Draft Shelby County Demo Implementation Project	157 days	Wed 2/22/06	Mon 9/25/06		0%
2	County Finalize / Sign Contract	0 days	Wed 3/15/06	Wed 3/15/06		0%
3	Escrow Software	5 days	Thu 3/16/06	Wed 3/22/06		0%
4	Meet Customer on Voter Outreach Planning	1 day	Mon 3/20/06	Mon 3/20/06		0%
5	Training See Separate Plan	1 day	Mon 3/20/06	Mon 3/20/06		0%
6	Project Plan for using Demo TSX units	4 days	Mon 3/20/06	Thu 3/23/06		0%
7	Review Project Plan with County	2 days	Mon 3/20/06	Tue 3/21/06		0%
8	Revise and Finalize Project Plan	2 days	Wed 3/22/06	Thu 3/23/06		0%
9	Project Plan Ready and Approved	0 days	Thu 3/23/06	Thu 3/23/06		0%
10	Kickoff Meetings	2 days	Mon 3/20/06	Tue 3/21/06		0%
11	Conduct Kick Off meeting with Shelby County Staff	2 days	Mon 3/20/06	Tue 3/21/06		0%
12	Setup Shelby County with Help Desk for Issues management	1 day	Mon 3/20/06	Mon 3/20/06		0%
13	Evaluate existing server for needed upgrade	0 days	Wed 4/29/06	Wed 4/29/06		30%
14	Assist County on Ballot Layout	1 day	Tue 2/28/06	Tue 2/28/06		0%
15	County Sign off on EPB purchase for August Election	0 days	Mon 4/3/06	Mon 4/3/06		0%
16	Begin to Receive DEMO Ordered Equipment and Assess Condition	5 days	Mon 4/3/06	Fri 4/7/06		0%
17	Shipping, Delivery and Unpacking of 400 TSX Demo Units	5 days	Mon 4/3/06	Fri 4/7/06		0%
18	Confirm county inventory and update	5 days	Mon 4/3/06	Fri 4/7/06		0%
19	Diagnostics and Set Up of DRE Precinct Demo Equipment at County	10 days	Mon 4/3/06	Thu 4/13/06		0%
20	Formal acceptance sign off of diagnostics of DRE equipment	10 days	Mon 4/3/06	Thu 4/13/06		0%
21	Demo County Testing Complete	0 days	Thu 4/13/06	Thu 4/13/06		0%
22	Logistics and Facilities Planning	2 days	Mon 4/17/06	Tue 4/18/06		0%
23	Verify precinct locations	1 day	Mon 4/17/06	Mon 4/17/06		0%
24	Establish plans for equipment delivery to polling sites	1 day	Tue 4/18/06	Tue 4/18/06		0%

<sup>1</sup> Subject to finalization by both parties during Project Kick-off.

EXHIBIT E  
Delivery Schedule

25	Establish plans for any Demo Support Election Day	1 day	Tue 4/18/06	Tue 4/18/06	0%
26	Workflow and Logistic Planning Complete	0 days	Tue 4/18/06	Tue 4/18/06	0%
27	<b>Election Preparation Activities</b>	22 days	Tue 4/4/06	Mon 5/1/06	0%
28	Create Famous Name Memory Cards for Demo's	5 days	Tue 4/4/06	Sat 4/8/06	0%
29	Label Memory Cards	5 days	Tue 4/4/06	Sat 4/8/06	0%
30	Create Demo Voter Access cards	5 days	Tue 4/4/06	Sat 4/8/06	0%
31	Label Demo Voter Access Cards	5 days	Tue 4/4/06	Sat 4/8/06	0%
32	All Demo Units Delivered to Polling Locations	2 days	Sun 4/30/06	Mon 5/1/06	0%
33	Election Preparation Activities Complete	0 days	Mon 5/1/06	Mon 5/1/06	0%
34	<b>Election Day Activities</b>	1 day	Tue 5/2/06	Tue 5/2/06	0%
35	Open Polls	1 day	Tue 5/2/06	Tue 5/2/06	0%
36	Demo Vote	1 day	Tue 5/2/06	Tue 5/2/06	0%
37	Close Polls	1 day	Tue 5/2/06	Tue 5/2/06	0%
38	Election Day Complete	0 days	Tue 5/2/06	Tue 5/2/06	0%
39	<b>Post Election Activities</b>	48 days	Mon 5/15/06	Wed 7/19/06	0%
40	Conduct Lessons learned session with project team	4 days	Mon 5/15/06	Thu 5/18/06	0%
41	Conduct lessons learned session with Customer	4 days	Mon 5/22/06	Thu 5/25/06	0%
42	Project Closeout	1 day	Thu 5/25/06	Thu 5/25/06	0%
43	Process any warranty equipment	18 days	Mon 6/26/06	Wed 7/19/06	0%
44	Upgrade existing Customer Server	2 days	Mon 6/5/06	Tue 6/6/06	0%
45	<b>Project Planning August Election</b>	78 days	Mon 5/15/06	Tue 8/29/06	0%
46	Develop Project Plan	4 days	Mon 5/15/06	Thu 5/18/06	0%
47	Review Project Plan with County	2 days	Mon 5/22/06	Tue 5/23/06	0%
48	Revise and Finalize Project Plan	1 day	Wed 5/24/06	Wed 5/24/06	0%
49	Project Plan Ready and Approved	0 days	Wed 5/24/06	Wed 5/24/06	0%
50	<b>Establish Weekly / Monthly Meeting Schedule</b>	72 days	Tue 5/23/06	Tue 8/29/06	0%
51	1	1 day	Tue 5/23/06	Tue 5/23/06	0%
52	2	1 day	Tue 5/30/06	Tue 5/30/06	0%
53	3	1 day	Tue 6/6/06	Tue 6/6/06	0%
54	4	1 day	Tue 6/13/06	Tue 6/13/06	0%
55	5	1 day	Tue 6/20/06	Tue 6/20/06	0%
56	6	1 day	Tue 6/27/06	Tue 6/27/06	0%
57	7	1 day	Tue 7/4/06	Tue 7/4/06	0%
58	8	1 day	Tue 7/11/06	Tue 7/11/06	0%
59	9	1 day	Tue 7/18/06	Tue 7/18/06	0%
60	10	1 day	Tue 7/25/06	Tue 7/25/06	0%
61	11	1 day	Tue 8/1/06	Tue 8/1/06	0%
62	12	1 day	Tue 8/8/06	Tue 8/8/06	0%
63	13	1 day	Tue 8/15/06	Tue 8/15/06	0%

EXHIBIT E  
Delivery Schedule

64	14	1 day	Tue 8/22/06	Tue 8/22/06	0%
65	15	1 day	Tue 8/29/06	Tue 8/29/06	0%
66	<b>Risk and Contingency Plan</b>	6 days	Tue 5/23/06	Tue 5/30/06	0%
67	Identify Project Risks	1 day	Tue 5/23/06	Tue 5/23/06	0%
68	Identify risk impact and probability	1 day	Wed 5/24/06	Wed 5/24/06	0%
69	Identify and document risk responses	1 day	Thu 5/25/06	Thu 5/25/06	0%
70	Draft a risk management plan	2 days	Fri 5/26/06	Mon 5/29/06	0%
71	Review risk management plan with County	1 day	Tue 5/30/06	Tue 5/30/06	0%
72	Risk Management Plan Completed	0 days	Tue 5/23/06	Tue 5/23/06	0%
73	<b>Receive Ordered Equipment and Assess Condition</b>	13 days	Mon 5/15/06	Wed 5/31/06	0%
74	Receive Server	0 days	Mon 5/15/06	Mon 5/15/06	0%
75	Receive TSX, EPB's and Peripherals	4 days	Mon 5/22/06	Thu 5/25/06	0%
76	Confirm county inventory and update	4 days	Fri 5/26/06	Wed 5/31/06	0%
77	<b>Diagnostics and acceptance testing of DRE and EPB Equipment at County</b>	18 days	Tue 5/16/06	Thu 6/8/06	0%
78	Test server and peripherals	2 days	Tue 5/16/06	Wed 5/17/06	0%
79	Download memory cards	2 days	Thu 5/18/06	Fri 5/19/06	0%
80	Program encoders and voter access cards	1 day	Mon 5/22/06	Mon 5/22/06	0%
81	Test/ Configure EPB's	10 days	Tue 5/23/06	Mon 6/5/06	0%
82	Test DRE Units	12 days	Tue 5/23/06	Wed 6/7/06	0%
83	Formal acceptance sign off of diagnostics of DRE equipment/ AB Solution	0 days	Wed 6/7/06	Wed 6/7/06	0%
84	Provide county database with Equipment inventory	1 day	Thu 6/8/06	Thu 6/8/06	0%
85	Ordered Equipment Received and Acceptance Testing Complete	0 days	Thu 6/8/06	Thu 6/8/06	0%
86	County Testing Complete	0 days	Thu 6/8/06	Thu 6/8/06	0%
87	<b>Logistics and Facilities Planning</b>	5 days	Mon 6/5/06	Fri 6/9/06	0%
88	Identify and document election day communication approach and process	1 day	Mon 6/5/06	Mon 6/5/06	0%
89	Identify and document election day AV ballot scanning workflow	0 days	Mon 6/5/06	Mon 6/5/06	0%
90	Identify and document process for receiving memory card info into GEMS on election night	0 days	Mon 6/5/06	Mon 6/5/06	0%
91	Verify precinct locations	1 day	Tue 6/6/06	Tue 6/6/06	0%
92	Review and approve reports and reporting sets with County.	1 day	Wed 6/7/06	Wed 6/7/06	0%
93	Identify and document election day reporting process	0 days	Wed 6/7/06	Wed 6/7/06	0%
94	Establish plans for equipment delivery to polling sites	1 day	Thu 6/8/06	Thu 6/8/06	0%
95	Establish plans for Election Day resources	1 day	Fri 6/9/06	Fri 6/9/06	0%

EXHIBIT E  
Delivery Schedule

96	Workflow and Logistic Planning Complete	0 days	Fri 6/9/06	Fri 6/9/06	0%
97	General Election Preparation	24 days	Mon 5/29/06	Thu 6/29/06	0%
98	GEMS Preparation	3 days	Mon 5/29/06	Wed 5/31/06	0%
99	Paper and Audio Ballot Preparation	3 days	Thu 6/1/06	Mon 6/5/06	0%
100	Define Ballot Layout-Fonts, Colors. Create Preliminary Ballot Proofs	0 days	Mon 6/5/06	Mon 6/5/06	0%
101	Define Database Content-Districts, Precincts, Races	1 day	Tue 6/6/06	Tue 6/6/06	0%
102	Certify Candidates Filings	1 day	Wed 6/7/06	Wed 6/7/06	0%
103	End date for Charter filings	1 day	Fri 6/9/06	Fri 6/9/06	0%
104	Submit ballot info to printer vendor for Proofs	0 days	Fri 6/9/06	Fri 6/9/06	0%
105	Receive ballot proofs from vendor	2 days	Fri 6/9/06	Mon 6/12/06	0%
106	Proof Ballots / Approve Ballot Layout & Artwork	2 days	Tue 6/13/06	Wed 6/14/06	0%
107	County Approval of ballot content and layout	2 days	Thu 6/15/06	Fri 6/16/06	0%
108	Order ballots - GEMS ballot info (PDF or Data Base) to printer for Absentee printing	0 days	Fri 6/16/06	Fri 6/16/06	0%
109	Send GEMS to Vendor for Audio Ballot Prep	0 days	Mon 6/12/06	Mon 6/12/06	0%
110	Paper and Audio ballot info complete, approved and sent to ballot vendors	0 days	Tue 6/13/06	Tue 6/13/06	0%
111	Receive Paper Ballots from Printer	3 days	Fri 6/16/06	Tue 6/20/06	0%
112	Receive Audio Ballot from Audio Vendor	1 day	Mon 6/26/06	Mon 6/26/06	0%
113	Check and Verify Paper Ballots received	3 days	Fri 6/16/06	Tue 6/20/06	0%
114	Check and verify Audio Ballots	3 days	Mon 6/26/06	Wed 6/28/06	0%
115	Test and audit the GEMS database	1 day	Mon 6/19/06	Mon 6/19/06	0%
116	Finalize GEMS Database for May 2006 Election	1 day	Tue 6/20/06	Tue 6/20/06	0%
117	Paper and Audio Ballots Received and Validated	8 days	Tue 6/20/06	Thu 6/29/06	0%
118	Military Ballot mail out for August Election	1 day	Wed 6/21/06	Wed 6/21/06	0%
119	Early Voting Election Preparation Activities	7 days	Mon 7/3/06	Tue 7/11/06	0%
120	Prepare EV Memory Cards, EV Master Voter Access Cds & Encoders	2 days	Mon 7/3/06	Tue 7/4/06	0%
121	Label EV Memory Cards	1 day	Wed 7/5/06	Wed 7/5/06	0%
122	Label EV Voter Access Cards	0 days	Wed 7/5/06	Wed 7/5/06	0%
123	Load Security Code, Program and Label EV Encoders	1 day	Thu 7/6/06	Thu 7/6/06	0%
124	Perform EV L&A testing and Set Devices to Election Mode	1 day	Fri 7/7/06	Fri 7/7/06	0%
125	Logic and Accuracy Testing Complete	0 days	Fri 7/7/06	Fri 7/7/06	0%
126	Deliver equipment to polling locations	1 day	Mon 7/10/06	Mon 7/10/06	0%
127	EV Voting Opens	1 day	Tue 7/11/06	Tue 7/11/06	0%
128	August Election Preparation Activities	12 days	Mon 7/17/06	Tue 8/1/06	0%
129	Logic and Accuracy Preparation and Testing	2 days	Mon 7/17/06	Tue 7/18/06	0%
130	Decide on precinct order of L&A based on TSx	1 day	Mon 7/17/06	Mon 7/17/06	0%

EXHIBIT E  
Delivery Schedule

	delivery schedule to polling locs					
131	Prepare Memory Cards, Master Voter Access Cds & Encoders	4 days	Tue 7/18/06	Fri 7/21/06		0%
132	Create Memory Cards in precinct/polling loc equipment delivery order	0 days	Tue 7/18/06	Tue 7/18/06		0%
133	Label Memory Cards	2 days	Tue 7/18/06	Wed 7/19/06		0%
134	Create Master Voter Access cards	2 days	Thu 7/20/06	Fri 7/21/06		0%
135	Label Master Voter Access Cards	2 days	Thu 7/20/06	Fri 7/21/06		0%
136	Load Security Code, Program and Label Encoders	3 days	Mon 7/24/06	Wed 7/26/06		0%
137	Perform L&A testing and Set Devices to Election Mode	2 days	Thu 7/27/06	Fri 7/28/06		0%
138	Perform L&A testing on Optical Scan Devices	2 days	Mon 7/31/06	Tue 8/1/06		0%
139	Logic and Accuracy Testing Complete	0 days	Tue 8/1/06	Tue 8/1/06		0%
140	Deliver equipment to polling locations	2 days	Mon 7/31/06	Tue 8/1/06		0%
141	All Equipment Delivered to Polling Locations	0 days	Tue 8/1/06	Tue 8/1/06		0%
142	Public L&A - Run Paper Ballot Test Decks	1 day	Tue 8/1/06	Tue 8/1/06		0%
143	Rover meetings	2 days	Mon 7/31/06	Tue 8/1/06		0%
144	Election Preparation Activities Complete	0 days	Tue 8/1/06	Tue 8/1/06		0%
145	<b>Election Day Activities</b>	1 day	Wed 8/2/06	Wed 8/2/06		0%
146	Open Polls	1 day	Wed 8/2/06	Wed 8/2/06		0%
147	Vote	1 day	Wed 8/2/06	Wed 8/2/06		0%
148	Close Polls	1 day	Wed 8/2/06	Wed 8/2/06		0%
149	Tally Absentee Results	1 day	Wed 8/2/06	Wed 8/2/06		0%
150	Tally Precinct Results	1 day	Wed 8/2/06	Wed 8/2/06		0%
151	Post Countywide Unofficial results	1 day	Wed 8/2/06	Wed 8/2/06		0%
152	Report in to DESI Help Desk with status	1 day	Wed 8/2/06	Wed 8/2/06		0%
153	Election Day Complete	1 day	Wed 8/2/06	Wed 8/2/06		0%
154	<b>Post Election Activities</b>	39 days	Thu 8/3/06	Mon 9/25/06		0%
155	Audit Election Results	5 days	Thu 8/3/06	Tue 8/8/06		0%
156	Conduct recount as required	0 days	Tue 8/8/06	Tue 8/8/06		0%
157	Prepare Secretary of State abstract and submit	3 days	Wed 8/9/06	Fri 8/11/06		0%
158	Conduct Lessons learned session with project team	3 days	Wed 8/9/06	Fri 8/11/06		0%
159	Conduct lessons learned session with Customer	2 days	Mon 8/14/06	Tue 8/15/06		0%
160	Project Closeout	0 days	Tue 8/15/06	Tue 8/15/06		0%
161	Process any warranty equipment	15 days	Tue 9/5/06	Mon 9/25/06		0%

## **Exhibit F**

Voter Outreach Deliverables, Budget, Schedule and Plan  
Schedule F

Deliverable	Details	Cost
<b>Direct Outreach Efforts</b>		
Community Event Plan	Develop a Community Event Demonstration Plan—a public awareness/community relations marketing plan to reach and affect Shelby County voters with use of new electronic voting machines. This plan will detail: <ul style="list-style-type: none"> <li>• Communication Strategy</li> <li>• Target Audiences</li> <li>• Targeted Geographic areas</li> <li>• Description of Event Demonstrations</li> <li>• Number Goal of Voters</li> <li>• Plan of Success Evaluation</li> </ul>	\$6,500
Community Event Demonstrations	Approximately 40, 2 hour events with 2 facilitators, 2 touch screens & supplies	\$35,750
Development of Web Site & Interactive Simulation	Not to exceed 40 hours of application development	\$7,500 + Hosting Costs <i>(recommend site be hosted and maintained on agency server)</i>
<b>Indirect Outreach Efforts</b>		
Creation and Production of Television Commercial	Not to exceed 30 seconds; Message: New voting equipment; it's easy, accessible and convenient; Delivery of one master copy	\$8,000
Creation and Production of a How to Vote Public Service Announcement	Not to exceed 120 seconds; Message: How to Vote Instructional; Delivery of one master copy	\$5,400
Creation and Production of Radio Public Service Announcement	Not to exceed 30 seconds; Message: Exercise Your Right to Vote; Delivery of one master copy	\$2,000
"How to Vote" Brochure (full size)	Includes design, printing and delivery; 70,000 copies; 8 ½" x 11" tri-fold on 80# glossy paper, 4 color print	\$9,000
"How to Vote" Brochure (wallet size)	Includes design, printing and delivery; 35,000 copies, wallet size, folded on 80# glossy paper, 4 color	\$4,700
"How to Vote" Posters	Includes printing and delivery of standard poster design; 22"x 28"; Delivery of 283, one for each polling location	\$1,915
Design of an indoor/outdoor advertisement	Design only – size TBD	\$1,500
Indoor / Outdoor Advertising	Place 3-5 ads in locations TBD (mall shelters, bus shelters, bus, or billboard) for length of time TBD (likely one month or less for each)	\$16,000
<b>Total</b>		<b>\$98,265</b>



10	Task Name	Duration	Start	Finish	Predecessors	Resource Names
1	<b>Voter Outreach Plan</b>	<b>30 days</b>	<b>Mon 3/6/06</b>	<b>Fri 4/14/06</b>		
2	SC completes initial planning questionnaire	10 days	Mon 3/6/06	Fri 3/17/06		SC
3	DESI writes first draft of document and submits to SC for review	5 days	Mon 3/20/06	Fri 3/24/06	2	DESI
4	SC reviews first draft and provides revisions per electronic tracking	3 days	Mon 3/27/06	Wed 3/29/06	3	SC
5	DESI reviews and writes second draft and submits to SC	3 days	Thu 3/30/06	Mon 4/3/06	4	DESI
6	SC reviews second draft and provides revisions per electronic tracking	3 days	Tue 4/4/06	Thu 4/6/06	5	SC
7	DESI review and writes final draft and submits to SC	3 days	Fri 4/7/06	Tue 4/11/06	6	DESI
8	SC reviews final draft and signs off on task completion	3 days	Wed 4/12/06	Fri 4/14/06	7	SC
9						
10	<b>Event Demonstration Plan</b>	<b>21 days</b>	<b>Mon 3/6/06</b>	<b>Mon 4/3/06</b>		
11	SC and Trust hold initial planning meeting	1 day	Mon 3/6/06	Mon 3/6/06		SC/TRUST/DESI
12	TRUST writes first draft of document and submits to SC for review	5 days	Tue 3/7/06	Mon 3/13/06	11	TRUST
13	SC/DESI reviews first draft and provides revisions per electronic tracking	3 days	Tue 3/14/06	Thu 3/16/06	12	SC
14	TRUST reviews and writes second draft and submits to SC	3 days	Fri 3/17/06	Tue 3/21/06	13	TRUST
15	SC/DESI reviews second draft and provides revisions per electronic tracking	3 days	Wed 3/22/06	Fri 3/24/06	14	SC
16	TRUST reviews and writes final draft and submits to SC	3 days	Mon 3/27/06	Wed 3/29/06	15	TRUST
17	SC reviews final draft and signs off on task completion	3 days	Thu 3/30/06	Mon 4/3/06	16	SC
18						
19	<b>Community Event Demonstrations</b>	<b>160 days</b>	<b>Mon 4/3/06</b>	<b>Fri 11/10/06</b>		
20	Contact & Schedule Event Locations (per Event Demo Plan)	150 days	Mon 4/10/06	Fri 11/3/06		TRUST
21	Hire/Schedule Facilitators / Equipment	160 days	Mon 4/3/06	Fri 11/10/06		TRUST
22	Review Scheduled Events/Ongoing Scheduling	150 days	Mon 4/10/06	Fri 11/3/06		TRUST/DESI/SC
23	Kick Off Event Demos	1 day	Mon 4/24/06	Mon 4/24/06		TRUST
24	<b>Event Demo Support</b>	<b>8 days</b>	<b>Mon 4/3/06</b>	<b>Wed 4/12/06</b>		
25	Draft Generic Press Advisory	1 day	Mon 4/3/06	Mon 4/3/06		DESI/TRUST
26	Sign off on Generic Press Advisory	5 days	Tue 4/4/06	Mon 4/10/06	25	SC
27	Release Press Advisory (will be done prior to each event)	2 days	Tue 4/11/06	Wed 4/12/06	26	TRUST
28	Follow up with Area Press (will be done prior to each event)	2 days	Tue 4/11/06	Wed 4/12/06	26	TRUST
29						
30	<b>Web Site Development</b>	<b>29 days</b>	<b>Mon 3/6/06</b>	<b>Thu 4/13/06</b>		
31	Submit web model pages and web builder planning document to SC	1 day	Mon 3/6/06	Mon 3/6/06		DESI
32	SC submits web builder planning document to DESI	5 days	Tue 3/7/06	Mon 3/13/06	31	SC
33	Identify and Complete contract with web designer	5 days	Tue 3/14/06	Mon 3/20/06	32	DESI/Web Designer
34	SC submits all necessary high resolution artwork	1 day	Tue 3/21/06	Tue 3/21/06	33	SC
35	Con call between web designer/SC/SC webmaster	1 day	Wed 3/22/06	Wed 3/22/06	34	DESI/KC/Web Design
36	Draft pages developed and delivered to SC	5 days	Thu 3/23/06	Wed 3/29/06	35	Web Designer

ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names
37	SC reviews draft pages and submits changes	5 days	Thu 3/30/06	Wed 4/5/06	36	SC
38	Draft pages revised and submitted to SC for review	3 days	Thu 4/6/06	Mon 4/10/06	37	Web Designer
39	SC receives final pages and signs off	1 day	Tue 4/11/06	Tue 4/11/06	38	SC
40	Web pages delivered per SC's requested format to SC	1 day	Wed 4/12/06	Wed 4/12/06	39	Web Designer
41	SC acknowledges task completion/receipt	1 day	Thu 4/13/06	Thu 4/13/06	40	SC
42						
43	<b>Interactive Simulation File</b>	<b>23 days</b>	<b>Mon 3/6/06</b>	<b>Wed 4/5/06</b>		
44	All database, ballot station info, screen captures info gathered	5 days	Mon 3/6/06	Fri 3/10/06		DESI
45	Draft Simulation file programmed	5 days	Mon 3/13/06	Fri 3/17/06	44	DESI
46	Draft file submitted to SC for review	1 day	Mon 3/20/06	Mon 3/20/06	45	DESI
47	SC reviews draft file and submits final changes	5 days	Tue 3/21/06	Mon 3/27/06	46	SC
48	Final changes programmed	5 days	Tue 3/28/06	Mon 4/3/06	47	DESI
49	File delivered to SC	1 day	Tue 4/4/06	Tue 4/4/06	48	DESI
50	SC acknowledges tasks completion/receipt	1 day	Wed 4/5/06	Wed 4/5/06	49	SC
51						
52	<b>How to Vote Public Service Announcement</b>	<b>62 days</b>	<b>Mon 3/13/06</b>	<b>Tue 6/6/06</b>		
53	Identify PSA Goals / Specs	1 day	Mon 3/13/06	Mon 3/13/06		SC/DESI
54	Submit Model PSA scripts for SC's review	1 day	Mon 3/13/06	Mon 3/13/06		DESI
55	SC revises model script or communicates concept for development of new script	5 days	Tue 3/14/06	Mon 3/20/06	53,54	SC
56	DESI revises script and submits to SC for Review	5 days	Tue 3/21/06	Mon 3/27/06	55	DESI
57	SC reviews script revisions and submits changes	5 days	Tue 3/28/06	Mon 4/3/06	56	SC
58	DESI revises script and submits to SC for review	5 days	Tue 4/4/06	Mon 4/10/06	57	DESI
59	SC reviews script revisions and submits final changes	5 days	Tue 4/11/06	Mon 4/17/06	58	SC
60	DESI revises script and submits to SC for final review	5 days	Tue 4/18/06	Mon 4/24/06	59	DESI
61	SC receives final draft and signs off for production	5 days	Tue 4/25/06	Mon 5/1/06	60	SC
62	SC submits requested talent/network	1 day	Tue 4/25/06	Tue 4/25/06	60	SC
63	Coordinate talent/network/etc needed	15 days	Tue 5/2/06	Mon 5/22/06	61	DESI/IMG
64	IMG Produces rough audio/video	3 wks	Wed 4/26/06	Tue 5/16/06	62	IMG
65	Customer review rough edit/Submits final production revisions	2 wks	Tue 5/23/06	Mon 6/5/06	63	SC
66	IMG Prepares Final Audio/Video	2 wks	Wed 5/17/06	Tue 5/30/06	64	IMG
67	SC acknowledges receipt of master copy of video and task completion	1 day	Tue 6/6/06	Tue 6/6/06	65	SC
68						
69	<b>Audio Public Service Announcement</b>	<b>67 days</b>	<b>Mon 3/13/06</b>	<b>Tue 6/13/06</b>		
70	Identify PSA Goals/Specs	1 day	Mon 3/13/06	Mon 3/13/06		SC/DESI
71	Submit Model PSA scripts for SC's review	1 day	Mon 3/13/06	Mon 3/13/06		DESI
72	SC revises model script or communicates concept for development of new script	1 wk	Tue 3/14/06	Mon 3/20/06	70,71	SC

ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names
73	DESI revises script and submits to SC for Review	1 wk	Tue 3/21/06	Mon 3/27/06	72	DESI
74	SC reviews script revisions and submits changes	1 wk	Tue 3/28/06	Mon 4/3/06	73	SC
75	DESI revises script and submits to SC for review	1 wk	Tue 4/4/06	Mon 4/10/06	74	DESI
76	SC reviews script revisions and submits final changes	1 wk	Tue 4/11/06	Mon 4/17/06	75	SC
77	DESI revises script and submits to SC for final review	1 wk	Tue 4/18/06	Mon 4/24/06	76	DESI
78	SC receives final draft and signs off for production	1 wk	Tue 4/25/06	Mon 5/1/06	77	SC
79	IMG Produces rough audio	1 wk	Tue 5/16/06	Mon 5/22/06	78	IMG
80	Customer review rough edit/Submits final production revisions	1 wk	Tue 5/23/06	Mon 5/29/06	79	SC
81	IMG Prepares Final Audio/Video & Ships	2 wks	Tue 5/30/06	Mon 6/12/06	80	IMG
82	SC acknowledges receipt of master copy of audio and task completion	1 day	Tue 6/13/06	Tue 6/13/06	81	SC
83						
84	<b>Television Commercial</b>	<b>48 days</b>	<b>Mon 4/24/06</b>	<b>Wed 6/28/06</b>		
85	Identify Goals / Specs for Video	1 day	Mon 4/24/06	Mon 4/24/06		SC/DESI
86	Submit Model scripts for SC's review	1 day	Mon 4/24/06	Mon 4/24/06		DESI
87	SC revises model script or communicates concept for development of new script	5 days	Tue 4/25/06	Mon 5/1/06	85,86	SC
88	DESI revises script and submits to SC for Review	3 days	Tue 5/2/06	Thu 5/4/06	87	DESI
89	SC reviews script revisions and submits changes	5 days	Fri 5/5/06	Thu 5/11/06	88	SC
90	DESI revises script and submits to SC for review	3 days	Fri 5/12/06	Tue 5/16/06	89	DESI
91	SC receives final draft and signs off for production	5 days	Wed 5/17/06	Tue 5/23/06	90	SC
92	IMG Produces rough audio/video	2 wks	Wed 5/24/06	Tue 6/6/06	91	IMG
93	Customer review rough edit/Makes final revisions	5 days	Wed 6/7/06	Tue 6/13/06	92	SC
94	IMG Prepares Final Audio/Video & Ships	2 wks	Wed 6/14/06	Tue 6/27/06	93	IMG
95	SC acknowledges receipt of master copy of video and signs off on task completion	1 day	Wed 6/28/06	Wed 6/28/06	94	SC
96						
97	<b>How to Vote Brochure</b>	<b>37 days</b>	<b>Mon 3/6/06</b>	<b>Tue 4/25/06</b>		
98	Identify Specs for Brochure	1 day	Mon 3/6/06	Mon 3/6/06		SC/DESI
99	Provide Model Brochure For Review & Markup	1 day	Tue 3/7/06	Tue 3/7/06	98	DESI
100	Review and Markup Brochure	1 day	Wed 3/8/06	Wed 3/8/06	99	SC
101	Receive markup from SC	1 day	Thu 3/9/06	Thu 3/9/06	100	SC
102	Collect all art/screen shots needed	5 days	Mon 3/6/06	Fri 3/10/06		DESI
103	Produce Draft Brochure	5 days	Fri 3/10/06	Thu 3/16/06	101	DESI/Graphic Designe
104	Customer reviews draft/Provides Final Revisions	3 days	Fri 3/17/06	Tue 3/21/06	103	SC
105	Final draft prepared	3 days	Wed 3/22/06	Fri 3/24/06	104	DESI/Graphic Designe
106	Electronic File of Final artwork delivered to SC	1 day	Mon 3/27/06	Mon 3/27/06	105	DESI/Graphic Designe
107	Electronic File of Final artwork delivered to printer	1 day	Mon 3/27/06	Mon 3/27/06	105	SC
108	Printer produces proof	3 days	Tue 3/28/06	Thu 3/30/06	107	Printer

ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names
109	DESI and SC sign off on proof	3 days	Fri 3/31/06	Tue 4/4/06	108	DESI/SC
110	Brochures are printed and delivered	15 days	Wed 4/5/06	Tue 4/25/06	109	Printer
111						
112	<b>How to Vote Poster</b>	29 days	Thu 3/16/06	Tue 4/25/06		
113	Resize Brochure Instructions & Submit to SC for review	1 day	Thu 3/16/06	Thu 3/16/06		Graphic Designer
114	Review draft poster and submit final revisions	3 days	Fri 3/17/06	Tue 3/21/06	113	SC
115	Make revisions to poster & submit final draft to SC	3 days	Wed 3/22/06	Fri 3/24/06	114	Graphic Designer
116	Submit art files to printer	1 day	Mon 3/27/06	Mon 3/27/06	115	Graphic Designer
117	Printer produces proof	3 days	Tue 3/28/06	Thu 3/30/06	116	Printer
118	DESI and SC sign off on proof	3 days	Fri 3/31/06	Tue 4/4/06	117	DESI/SC
119	Posters are printed and delivered	15 days	Wed 4/5/06	Tue 4/25/06	118	Printer
120						
121	<b>How to Vote Wallet Size Brochure</b>	29 days	Thu 3/16/06	Tue 4/25/06		
122	Resize Brochure Instructions & Submit to SC for review	1 day	Thu 3/16/06	Thu 3/16/06		Graphic Designer
123	Review draft wallet brochure and submit final revisions	3 days	Fri 3/17/06	Tue 3/21/06	122	SC
124	Make revisions to wallet brochure & submit final draft to SC	3 days	Wed 3/22/06	Fri 3/24/06	123	Graphic Designer
125	Submit art files to printer	1 day	Mon 3/27/06	Mon 3/27/06	124	Graphic Designer
126	Printer produces proof	3 days	Tue 3/28/06	Thu 3/30/06	125	Printer
127	DESI and SC sign off on proof	3 days	Fri 3/31/06	Tue 4/4/06	126	DESI/SC
128	Wallet size brochures are printed and delivered	15 days	Wed 4/5/06	Tue 4/25/06	127	Printer
129						
130	<b>Indoor/Outdoor Poster Design</b>	37 days	Mon 3/6/06	Tue 4/25/06		
131	Identify Specs for Indoor/Outdoor	1 day	Mon 3/6/06	Mon 3/6/06		SC/DESI
132	Provide Model Advertisement For Review & Markup	1 day	Tue 3/7/06	Tue 3/7/06	131	DESI
133	Review and Markup Advertisement	1 day	Wed 3/8/06	Wed 3/8/06	132	SC
134	Receive markup from SC	1 day	Thu 3/9/06	Thu 3/9/06	133	SC
135	Collect all art/screen shots needed	5 days	Mon 3/6/06	Fri 3/10/06		DESI
136	Produce Draft Advertisement	5 days	Fri 3/10/06	Thu 3/16/06	134	DESI/Graphic Designe
137	Customer reviews draft/Provides Final Revisions	3 days	Fri 3/17/06	Tue 3/21/06	136	SC
138	Final draft prepared	3 days	Wed 3/22/06	Fri 3/24/06	137	DESI/Graphic Designe
139	Electronic File of Final artwork delivered to printer	1 day	Mon 3/27/06	Mon 3/27/06	138	SC
140	Printer produces proof	3 days	Tue 3/28/06	Thu 3/30/06	139	Printer
141	DESI and SC sign off on proof	3 days	Fri 3/31/06	Tue 4/4/06	140	DESI/SC
142	Indoor/Outdoor Installed	15 days	Wed 4/5/06	Tue 4/25/06	141	Printer
143						
144	<b>Indoor/Outdoor Media Contract</b>	25 days	Mon 3/6/06	Fri 4/7/06		

ID	Task Name	Duration	Start	Finish	Predecessors	Resource Names
145	Research Indoor/Outdoor Opportunities/Receive Quotes	2 wks	Mon 3/6/06	Fri 3/17/06		DESI
146	Submit Proposal to SC for sign off	5 days	Mon 3/20/06	Fri 3/24/06	145	SC
147	Draft & Execute contract	10 days	Mon 3/27/06	Fri 4/7/06	146	DESI

## **Exhibit G**



Diebold Election Systems, Inc.  
PO Box 1019  
Allen, TX 75013  
800-433-VOTE  
Fax (214) 383-1596

Exhibit **G**  
12/12/05

December 12, 2005

Mr. Clifton Davis  
Shelby County Government  
160 N. Main Street, Suite 550  
Memphis, TN 38103

Re: Ballot Layout and EPB Demo

Dear Mr. Davis:

As requested, we are providing responses to your Ballot Layout and EPB Demo memo received on December 9, 2005.

*Please confirm that you will have the equipment on-site those three days and prepared to provide a demonstration accordingly.*

On Friday, Cathi Smothers spent several hours with **Dennis Boyce**, demonstrating not only the August 6 ballot, but the entire voting process. She highlighted enhancements in the new versions of Ballot Station, and reviewed programming changes in GEMS.

Comment [SP1]: Confirm name and spelling with Cathi's files, if possible.

Shelby County's August 6 ballot is a large ballot to program, displaying 13-15 pages on the AccuVote-TSX. Dennis requested changes to the ballot which were made during the demonstration. Cathi also covered the import process from the voter registration system to GEMS, confirming the same process that has been successfully used in Shelby County for Early Voting.

Cathi demonstrated the ExpressPoll to Dennis, showing how voter registration and GEMS ballot style files are loaded. As the ExpressPoll is precinct specific in election mode, Dennis requested that the ExpressPoll be set up for a specific precinct for the demonstration this week, and that Voter Access Cards be created on the AccuVote-TSX.

Under separate cover, would you provide a quote for your electronic poll book solution?  
The quote should be based on 566 total EPBs (2 per precinct).

# DIEBOLD ELECTION SYSTEMS COST PROPOSAL

December 12, 2005

## Express Poll Electronic Poll Book

Shelby County, Tennessee

Number of Precincts:	283
Number of Polling Places:	283
Number of Reg. Voters:	608,000

ITEM	QTY	DESCRIPTION	UNIT PRICE	PRICE
<b>Hardware &amp; Software</b>				
1	566	Express Poll 4000 (2 per precinct)	\$2,950.00	\$1,669,700.00
		Includes case, barcode wand, stylus, signature pad, training, 2 yr hardware warranty)		
	283	Spare CF memory card devices (512mb)	\$58.30	\$16,498.90
	566	Express Poll Software	\$300.00	included
<b>Total Hardware and Software</b>				<b>\$1,686,198.90</b>
<b>Installation &amp; Support Services</b>				
	1	Initial Staff Training (2 days)		Included
	1	Database Conversion Set Up (one time fee)	\$3,500.00	\$3,500.00
	1	Acceptance Testing Assistance	\$13,500.00	\$13,500.00
	1	Train the Trainer Pollworker course	\$3,250.00	\$3,250.00
	2	Logic & Accuracy Assistance (first 2 elections)	\$5,000.00	\$10,000.00
<b>Total Services</b>				<b>\$30,250.00</b>
<b>Total System Investment Costs</b>				<b>\$1,716,448.90</b>
<b>Less Countywide Allowance</b>				<b>(\$162,795.75)</b>
<b>Shipping</b>				<b>\$14,150.00</b>
<b>Total Investment</b>				<b>\$1,567,803.15</b>

**Note 1:** Additional cost reduction in exchange for any unneeded Voter Card Encoders would also be realized. Exchange value for new, unused Encoders is \$296 each and for used Encoders is \$196 each. The total estimated effect of this exchange is between \$166,404 and \$251,304 depending on exact quantity of encoders purchased and used according to original proposal.

<b>Extended Warranties/Maintenance Fees after expiration of initial coverage</b>	
<b>Required:</b>	<b>Annual Unit Fee</b>
Express Poll 4000 License Maintenance	\$25.00
<b>Optional:</b>	
Express Poll Extended Warranty	\$45.00
<b>Optional Services</b>	
Onsite Election Day Support (Express Poll only)	\$2,100.00
Election file memory card creation (included for first 2 elections)	\$500.00



*Also provide the following information:*

*1. Provide any ITA, NIST or IEEE certifications for the EPB version.*

Our systems meet all standards as outlined in the 2002 Voting System Standards adopted by the Federal Election Commission. Additionally, the DESI voting systems meet the more stringent requirements of the Help America Vote Act.

The AccuVote-TSX software has been tested by federally designated Independent Testing Authorities and has been federally qualified with NASED system numbers. This equipment includes the following versions, that are both NASED certified and certified in the State of Tennessee.

- GEMS version 1.18.22
- AccuVote-TSX with Ballot Station version 4.5.2
- Voter Card Encoder version 1.3.2
- Key Card Tool version 1.0.1
- AccuVote-OS Central Count with firmware 2.0.12
- VCProgrammer version 4.1.11

Diebold Election Systems, Inc. is in the process of submitting the following products and versions for certification in the State of Tennessee.

- GEMS with software version 1.18.24
- AccuVote-TSX DRE Touch Screen and AccuView Printer Module with firmware version 4.6.3
- AccuVote-OS (model D) with firmware version 1.96.6

Diebold Election Systems, Inc. is in the process of submitting for certification these additional products that can be used with the AccuVote-TSX DRE touch screen unit and the AccuVote-OS optical scan unit.

- AccuVote-OS Central Count with version 2.0.12
- VCProgrammer with version 4.6.1
- Key Card Tool with version 4.6.1
- Voter Card Encoder with 1.3.2
- ExpressPoll 4000 with 1.1.5

All the products listed above have completed the Independent Testing Authorities testing for the 2002 FECVSS Voting System Standards and a NASED System Number assigned of N-1-06-22-22-001.

On Friday, December 9, DESI submitted an application to the State of Tennessee for certification of Ballot Station 4.6.4.

2. *Clearly and specifically describe how the EPB would integrate with Shelby County's voter registration system.*

DESI's ExpressPoll 400 accepts files imported from Shelby County's voter registration system. The complete process was demonstrated for Dennis by Cathi Smothers on Friday.

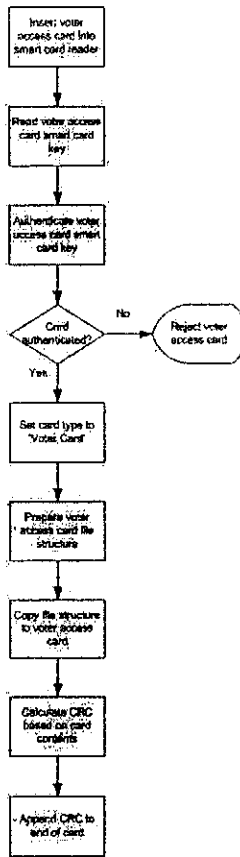
Ballots voted on DESI's AccuVote-TSX DRE voting devices are activated using encoded Voter Access Cards. Poll workers encode the voter access card using one of DESI's proprietary voter access card encoding devices, which include the AccuVote-TSX, Voter Card Encoder, VCProgrammer, and the ExpressPoll. With the use of such voter access cards, voters may activate, vote, and cast ballots completely independently of poll worker assistance. In particular, visually challenged or otherwise disabled voters should be able to vote in an entirely unassisted manner.

The ExpressPoll can encode voter access cards for any voting location at the polls, and hence may be used in polling as well as early voting environments. Prior to encoding voter access cards, the ExpressPoll units must be configured with jurisdictional information, including all precincts and parties supported in the election. All DESI voter access card encoding devices support the encoding of strictly visual or audio ballots, blended visual/audio ballots, visual ballot magnification, and provisional/challenged ballots.

Each voter access card is encoded with precinct/party information, but contains no voter-specific information. The voter inserts this card into the AccuVote-TSX smart card reader, whereupon the AccuVote-TSX unit activates the ballot corresponding to the precinct and party. Once the ballot has been cast, the voter access card is marked as voted, ejected from the AccuVote-TSX smart card reader, and is returned by the voter to the poll worker. Once the ballot has been cast, the voter access card cannot be re-used for voting until it has been re-encoded by a poll worker, using a proprietary voter access card encoding device. When the ballot has been cast, the voter access card 'Card Type' field is marked as 'Card Cast', and any attempt to re-insert the card to continue voting will be rejected, as it does not contain the expected 'Voter Card' value in the 'Card Type' field.

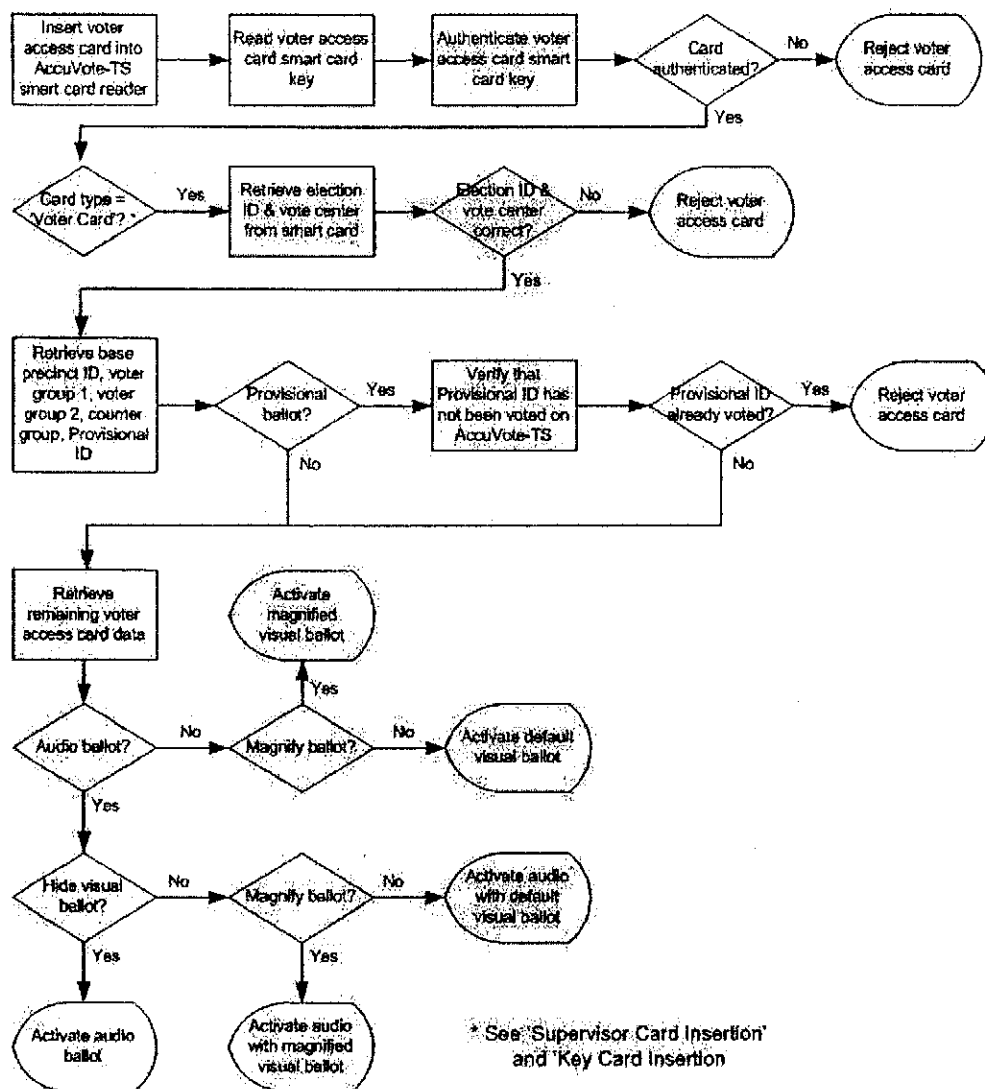
3. Please provide a diagram of the system architecture.

Ballot Station 4.6  
Encoding the Voter Access Card



## Ballot Station 4.6

### Activating the Ballot Using the Voter Access Card



4. Provide contact names and telephone numbers for at least 2 customers of similar size to Shelby County.

Fulton County, Georgia  
141 Pryor  
Atlanta, GA 30303  
Contact: Cynthia Welch, Election Chief  
404-730-7020

Lorain County, Ohio  
1985 North Ridge Road, East  
Lorain, OH 44055  
Contact: Thomas Smith, Chairman  
440-326-5900

Norfolk County, VA  
808 City Hall Building  
Norfolk, VA 23510  
Contact: Elisa Long, General Registrar  
757-664-4353

Johnson County, KS  
2101 Kansas City Road  
Olathe, KS 66061  
Contact: Brian Newby, Election Commissioner  
913-782-3441

Shelby County election officials visited Fulton County, Georgia to see the ExpressPoll used in a live election. Additionally DESI provided ExpressPolls to demo in four precincts in Shelby County's September election.

We look forward to continuing a strong and mutually beneficial relationship with Shelby County.

Sincerely,



Barry Herron  
Director of Sales

Item #: 38Prepared By: Deborah K. LingoCommissioner: WILLINGHAM

Approved By: \_\_\_\_\_

RESOLUTION TO APPROVE CONTRACT AND EXPENDITURE OF FUNDS TO DIEBOLD ELECTION SYSTEMS, INC., FOR THE PURCHASE OF THE ACCUVOTE TSX VOTING SYSTEM IN THE AMOUNT OF \$4,213,860.26 AND THE ELECTRONIC POLL BOOK AND VOTER VERIFIABLE PAPER AUDIT TRAIL IN THE AMOUNT OF \$2,245,353.15 FROM THE FY 2006 CIP BUDGET AND TO AMEND THE FY 2006 CIP BUDGET

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WHEREAS, The 1242 electronic voting system currently used in Shelby County, having been purchased in part as early as the Year 1985, is outdated, obsolete and not capable of containing and tabulating the August 3, 2006, ballot due to the large number of offices and candidates that may appear thereon; and

WHEREAS, The 1242 electronic voting system does not meet the standards established by the Help America Vote Act of 2002 Title 3, Section 301(a)(3) for accessibility by individuals with disabilities; and

WHEREAS, On September 8, 2005, the Shelby County Administrator of Purchasing issued on behalf of the Shelby County Election Commission a Request for Proposal No. 04-010-19 for a direct recording electronic and mail-in absentee voting system; and

WHEREAS, Two proposals were received in response to the above-mentioned Request for Proposal No. 04-010-19 from Diebold Election Systems, Inc., for the AccuVote TSX Voting System and Election Systems & Software for the IVotronic Voting System; and

WHEREAS, Both of these systems are certified by the State Coordinator of Elections and the State Election Commission for use in the State of Tennessee and the Shelby County Election Commission has observed both systems in actual elections and has carefully evaluated both voting systems; and

WHEREAS, The AccuVote Touch Screen Voting System, a product of Diebold Election Systems, Inc., has been successfully used in Shelby County since Year 1998 for early and absentee voting and approximately 165,000 voters are familiar with and have used the AccuVote Touch Screen Voting System in Shelby County; and

WHEREAS, The lowest and best bid received was submitted by Diebold Election Systems, Inc. in the total amount not to exceed \$4,213,860.26 for the purchase of 1,500 voting terminals, hardware, equipment, system and application software, testing and training; and

WHEREAS, In the opinion of the Shelby County Election Commission the AccuVote TSX Voting System is the one which would be in the best interest of the citizens in holding fair and honest elections in Shelby County and least likely to become outmoded in the foreseeable future; and

WHEREAS, The Shelby County Election Commission at its January 3, 2006, meeting by majority vote acted by Resolution No. 01-03/2006, a copy of which is attached, to select the Diebold Election System, Inc. AccuVote TSX Voting System as its vendor of choice; and

WHEREAS, Funds are available in the FY 2006 CIP Budget, Project No. 925-101716-7024, to cover this expense; and

WHEREAS, The State of Tennessee has allocated funds in the amount of \$3,170,000.00 to Shelby County for compliance with the Help America Vote Act to meet the 2002 Voting System Standards; and

WHEREAS, A firm, fixed price has been submitted by Diebold Election Systems, Inc., in the total, one-time cost amount not to exceed \$1,567,803.15 for the Electronic Poll Book and \$677,550.00 for the Voter Verifiable Paper Audit Trail, subject to certification by the State of Tennessee and the availability of funds in the 2006-2007 Shelby County budget.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the contract with Diebold Voting Systems, Inc. in the amount not to exceed \$4,213,860.26 is hereby approved, subject to approval by the County Attorney's office as to form.

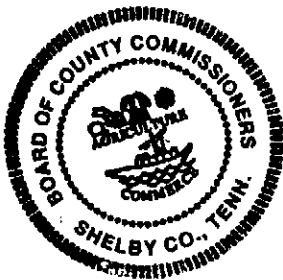
BE IT FURTHER RESOLVED, That the purchase and implementation of the Electronic Poll Book and Voter Verifiable Paper Audit Trail (VVPAT) technology in the amount of \$2,245,353.15 is hereby approved, subject to certification by the State of Tennessee.


BE IT FURTHER RESOLVED, That the FY 2006 CIP Budget for Project No. 101716 is hereby amended increasing the State Reimbursement from \$849,000.00 to \$3,170,000.00, reducing the G.O. Bond amount by \$769,696.00 to \$3,718,704.00, and increasing the expenditure amount for replacing the Shouptronic Voting System from \$4,907,910.00 to \$6,459,214.00.

BE IT FURTHER RESOLVED, The County Mayor is hereby authorized to execute on behalf of Shelby County Government the aforementioned Contract, a copy of which is on file in the contract Administration Department, and any and all other documents necessary to effectuate the intent of this Resolution.

BE IT FURTHER RESOLVED, That the present voting machines, supporting equipment and software will be disposed of in accordance with Shelby County policies and procedures for the benefit of Shelby County Government.

BE IT FURTHER RESOLVED, The County Mayor and Division Director of Administration and Finance are authorized to issue their warrant or warrants in amounts not to exceed \$6,459,213.41 for the purposes contained in this Resolution to Diebold Voting Systems, Inc., and to take proper credit in the accounting therefor.



  
A C Wharton, Jr., County Mayor

Date: March 16, 2006

ATTEST:

  
Clerk of County Commission

ADOPTED: MARCH 13, 2006

ITEM # 11-07-2008

PREPARED BY Rosemary Barbee

APPROVED BY \_\_\_\_\_

**RESOLUTION RECOMMENDING THAT THE SHELBY COUNTY BOARD OF COMMISSIONERS RESOLUTION #38, ADOPTED MARCH 13, 2006, FOR THE PURCHASE OF THE ACCUVOTE TSX VOTING SYSTEM, THE ELECTRONIC POLL BOOK AND VOTER VERIFIABLE PAPER AUDIT TRAIL BE AMENDED AND THE CIP BUDGET BE AMENDED TO REFLECT FUNDS IN THE AMOUNT OF \$2,245,353.15 AVAILABLE FOR THE PURCHASE OF ELECTRONIC POLL BOOKS**

---

WHEREAS, The Shelby County Board of Commission approved entering into a contract with Diebold Election Systems, Inc. to purchase one thousand five hundred (1,500) the AccuVote TSX Voting units and support equipment, and

WHEREAS, CIP funds in the amount not to exceed \$4,213,860.26 were set aside in FY06 for the purchase of 1,500 voting terminals, hardware, equipment, system and application software, testing and training, and

WHEREAS, Diebold Election Systems, Inc. submitted a fixed price for a total one-time cost amount not to exceed \$1,567,803.15 for the Electronic Poll Book and \$677,550.00 for the Voter Verifiable Paper Audit Trail, and

WHEREAS, The Shelby County Election Commission voted at its Special Meeting on July 8, 2008 to transfer funds set aside in the amount of \$677,500.00 for the purchase of Voter Verifiable Paper Audit Trail to purchase a minimum of 670 Electronic Poll Books with printers to the extent CIP funds are available not to exceed \$2,245,536.00.

NOW, THEREFORE, BE IT RESOLVED, that the Shelby County Election Commission recommends to the Shelby County Board of Commissioners that Resolution #38, adopted March 13, 2006 be amended to purchase Electronic Poll Books in lieu of the Voter Verifiable Paper Audit Trail in the amount not to exceed \$2,245,356.00.

\_\_\_\_\_  
Myra C. Stiles, Chairman

\_\_\_\_\_  
Richard L. Holden, Secretary

\_\_\_\_\_  
Robert D. Meyers, Member



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O.C. Pleasant, Jr., Member

---

Shep Wilbun, Jr., Member

Adopted \_\_\_\_\_

**SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET**

Referred to Commission Committee: 5

For Commission Action on: (ASAP) \_\_\_\_\_

**DESCRIPTION OF ITEM:**

A JOINT RESOLUTION PURSUANT TO SECTION 8 OF THE ZONING ORDINANCE-  
RESOLUTION OF THE COUNTY OF SHELBY, AND THE CITY OF MEMPHIS, TENNESSEE,  
GRANTING A SPECIAL USE PERMIT FOR LAND LOCATED ON THE NORTH SIDE OF  
INDEPENDENCE ROAD APPROXIMATELY 250 FEET EAST OF WOODSTOCK-CUBA ROAD,  
KNOWN AS CASE NO. S.U.P. 08-207 CC

**SPONSORED BY COMMISSIONER RITZ**

**CHECK ALL THAT APPLY BELOW:**

  X   This Action does NOT require expenditure of funds.

       This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_ ; County CIP Funds- \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_ ; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** Office of Planning & Development-Land Use Control

**APPROVAL:**

Dept. Head: Mary L. Baker 576-6619 MB 6/18/08  
(Type your name & phone #.) (Initials) (Date)

Elected Official: \_\_\_\_\_  
(Name & phone #) (Initials) (Date)

Division Director: Richard S. Copeland 576-7197 MB 6/18/08  
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: \_\_\_\_\_  
(Name & phone #.) (Initials) (Date)

Finance Dept. \_\_\_\_\_  
(Name & phone #.) (Initials) (Date)

County Attorney: Robert B. Rolwing RBR 6/18/08  
(Name & phone #.) 545-4230 (Initials) (Date)

CAO/Mayor: \_\_\_\_\_  
(Name & phone #.) (Initials) (Date)

**SUMMARY SHEET**  
**S.U.P. 08-207 CC**

**I. Description of Item**

Applicant, a developer and operator of cell tower locations, requests a special use permit to construct and operate a 195-foot CMCS cell tower on property zoned Floodway and Agricultural the rear of 7040 Woodstock Cuba Road (Accessed from north side of Independence Road, ±250 feet east of Woodstock Cuba Road.)

**II. Source and Amount of Funding**

NA

**III. Contract Items**

NA

**IV. Additional Information Relevant to Approval of this Item**

This is an application for a special use permit, which is required for any cell tower in the Floodway District and for cell towers in the Agricultural zoning district in unincorporated Shelby County if they are within 1,500 feet of a property used for a residential use. *(In other locations, except certain special districts in the City of Memphis, cell towers may be approved by the Office of Construction Code Enforcement based on a site plan review as specified in the Zoning Regulations.)* In the zoning ordinance, the term Commercial Mobile Communication System (CMCS) tower is used to specify the commonly-used term "cell tower"

ITEM #: \_\_\_\_\_

PREPARED BY: Dave Adams

COMMISSIONER: Ritz

APPROVED BY: 

A JOINT RESOLUTION PURSUANT TO SECTION 8 OF THE ZONING ORDINANCE-RESOLUTION OF THE COUNTY OF SHELBY, AND THE CITY OF MEMPHIS, TENNESSEE, GRANTING A SPECIAL USE PERMIT FOR LAND LOCATED ON THE NORTH SIDE OF INDEPENDENCE ROAD APPROXIMATELY 250 FEET EAST OF WOODSTOCK-CUBA ROAD, KNOWN AS CASE NO. S.U.P. 08-207 CC.

RESOLUTION SPONSORED BY COMMISSIONER RITZ

-----

**WHEREAS**, Section 8 of the Zoning Ordinance-Regulations of the City of Memphis and Shelby County, being a section of the Joint Ordinance-Resolution No. 3064 dated October 6, 1980, as amended, authorized the Shelby County Board of Commissioners and the Memphis City Council to grant a special use permit for certain stated purposes subject to standards of general applicability in the various zoning districts outside of but within five miles of the Memphis City limits; and

**WHEREAS**, Application has been made by Global Tower, LLC for a special use permit with respect to the property located on the north side of Independence Road, approximately 250 feet east of Woodstock-Cuba Road intersection within the Floodway (FW) and Agricultural (AG) Districts for the purpose of constructing and operating a 195-foot CMCS cell tower installation; and

**WHEREAS**, The Office of Planning and Development has reviewed the application in accordance with the special use permit and special use permit provisions of the Zoning Ordinance-Regulations and reported its findings and recommendations to the Land Use Control Board; and

**WHEREAS**, A public hearing in relation thereto was held before the Memphis and Shelby County Land Use Control Board on April 10, 2008 and said board has studied and reported its recommendation to the Board of Commissioners and the City Council regarding the following potential effects of granting the special use permit on:

- A. The character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public safety and general welfare;
- B. The compatibility of the proposed building or use with the immediate vicinity

and the potential interference of said building or use on the development or use of adjacent property;

- C. The adequacy of public facilities including existing streets, parking, drainage, refuse disposal, fire protection, water and sewer or that such facilities will be provided;
- D. The destruction, loss or damage to features of significant natural, scenic or historic importance from the proposed building or use; and

**WHEREAS,** The Memphis and Shelby County Land Use Control Board and/or the Memphis and Shelby County Office of Planning and Development has recommended certain conditions be attached to the special use permit to reduce any potential adverse impacts of the proposed building or use on the neighborhood, adjacent property owners, public facilities and significant natural, scenic or historic features.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, AND THE COUNCIL OF THE CITY OF MEMPHIS,** That a special use permit is granted for the purpose of constructing and operating a CMCS cell tower in accordance with the site plan incorporated in the application, and subject to the attached conditions, all within the above mentioned Floodway (FW) and Agricultural (AG) Districts.

**BE IT FURTHER RESOLVED,** That this permit merely authorizes the filing of applications to acquire a Certificate of Use and Occupancy, or a Building Permit, and other required permits and approvals, provided that no such Certificate of Use and Occupancy shall be granted until all conditions imposed by the Board of Commissioners and the City Council have been met.

**BE IT FURTHER RESOLVED,** That this Resolution take effect from and after the date it shall have been passed by this Board of County Commissioners and by the Memphis City Council, and become effective as otherwise provided by law, and thereafter shall be treated as in full force and effect by virtue of the separate passage thereof by the Board of Commissioners of Shelby County, Tennessee, and the Council of the City of Memphis, the public welfare requiring same.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the County Commission

ADOPTED \_\_\_\_\_



## **SITE PLAN CONDITIONS**

**S.U.P. 08-207 CC**

**CMCS Cell Tower at 7040 Woodstock Cuba Road**

**As Recommended by the Land Use Control Board**

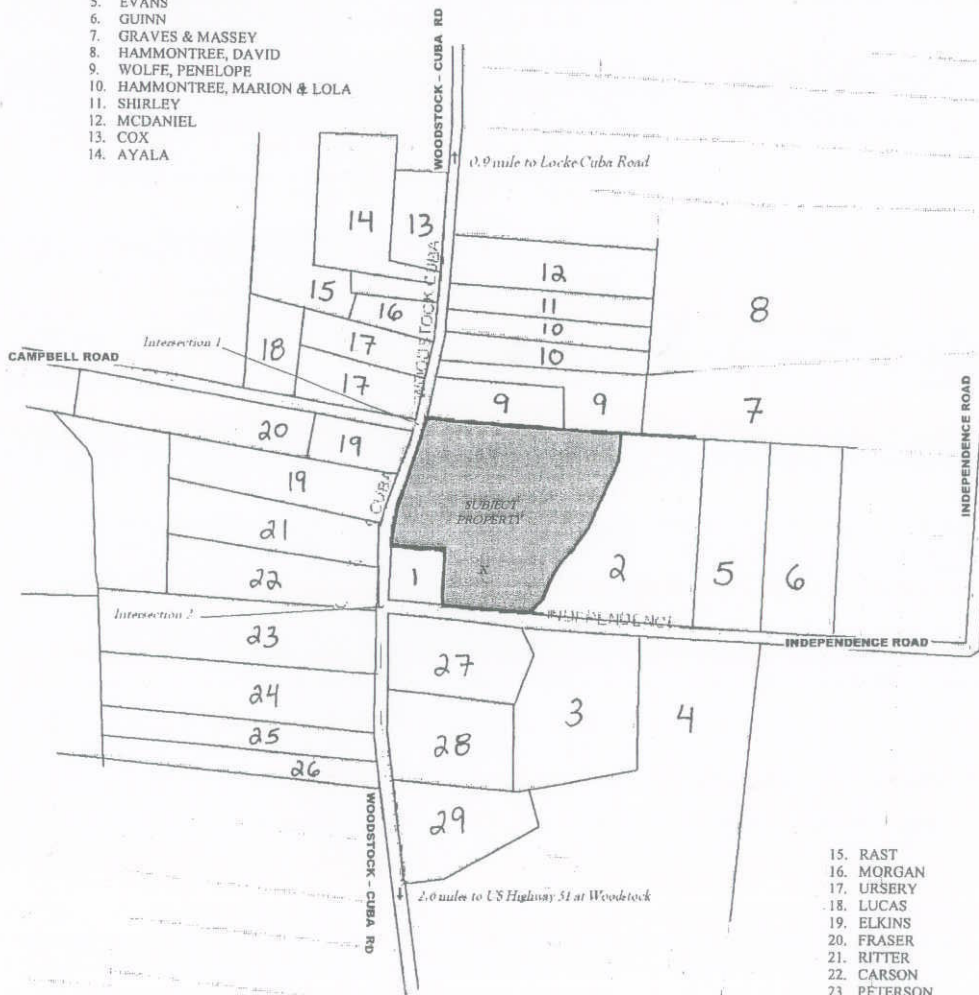
**April 10, 2008**

A Special Use Permit is hereby granted to the applicant Global Signal, LLC to allow construction and operation of a Commercial Mobile Communications Service (CMCS) Tower and ancillary facilities as specified below on the 11.97-acre property described in instrument number EG7382 as recorded in the Shelby County Register's Office, also known as 7040 Woodstock-Cuba Road in accordance with a site plan approved by the Office of Planning and Development and with the following supplemental conditions.

1. The maximum tower height shall be one-hundred ninety feet (195'), subject to Item 2 below, and the tower will incorporate the "slick stick" design with flush-mounted antennae.
2. The tower shall be free of all lighting, including aircraft hazard lighting, and shall be designed so as to avoid the necessity of such lighting under currently federal regulations.
3. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
4. The tower shall be constructed within two (2) years of approval by the Shelby County Board of Commissioners. The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within five-hundred (500') feet of the property.
5. The tower shall be structurally designed to accommodate at least six (6) additional sectorized arrays.
6. A security fence, six feet (6') or more in height shall be constructed around the tower and associated equipment.
7. The tower operator shall install and maintain perimeter screening as follows: The site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and within 40 feet of the site boundary. An equivalent alternative may be substituted with the approval of the Office of Planning and Development.
8. The access drive shall have an all-weather surface with asphalt pavement for the first 50 feet from Independence Road.
9. The location and design of the driveway access to Independence Road shall be subject to the review and approval of the County Engineer including the construction of any culverts that may be needed.
10. The location, design and construction of this tower shall be reviewed and approved by the County Engineer with respect to the issues identified in subsection D of the Floodway District regulations in Section 25 of zoning regulations. *[OPD recommendation]*

# VICINITY MAP

1. HARMON
2. BRAITHWAITE
3. WOLFE, DALLAS
4. WOLFE, CAROLYN
5. EVANS
6. GUINN
7. GRAVES & MASSEY
8. HAMMONTREE, DAVID
9. WOLFE, PENELOPE
10. HAMMONTREE, MARION & LOLA
11. SHIRLEY
12. MCDANIEL
13. COX
14. AYALA



15. RAST
16. MORGAN
17. URSERY
18. LUCAS
19. ELKINS
20. FRASER
21. RITTER
22. CARSON
23. PETERSON
24. BREWER
25. PITTMAN
26. STEPHENS
27. HAMILTON
28. CONLEY
29. FARLEY

SCALE: Distance between Intersection 1 & Intersection 2 (straight line) 747 feet  
 33 PARCELS WITHIN 700'  
 29 LAND OWNERS



Side restriction: 5'  
Rear restriction: 30'

N. 1/2 Sec. 16

PARCELS A & B  
Total Area  
10.00 ± ac.

PARCELS C & D  
Total Area  
10.00 ± ac.

PARCELS E & F  
Total Area  
10.00 ± ac.

INDEPENDENCE ROAD

PARENT TRACT OVERVIEW

WILLIAM H. SOMMER  
XVI  
AGRICULTURE  
COMMERCE



## PARENT TRACT OVERVIEW

## LAND USE CONTROL BOARD RECOMMENDATION

**CASE #: S.U.P. 08-207 CC**

At its regular meeting April 10, 2008, the Memphis and Shelby County Land Use Control Board held a continuation of its public hearing on the following application, requesting a special use permit on the property described as follows:

**LOCATION:** North side of Independence Rd; ±250 ft. east of Woodstock-Cuba Road

**OWNER OF RECORD:** Deanna Carter

**LESSOR/APPLICANT:** Global Tower, LLC

**PROPERTY SIZE:** 10,000 sq. ft. leased parcel in an 11.97-acre tract

**EXISTING ZONING:** Floodway (FW) and Agricultural (AG) District

**REQUEST:** 195-foot CMCS monopole cell tower

**Gloria Allmond, Baran Telecom, Inc.**, spoke in support of the application as the applicant's representative. She indicated: 1) that she had arranged and conducted a balloon test, as requested at the March 13 public hearing; 2) that she had brought this test to the attention of neighbors in the vicinity; and to her knowledge none were currently opposed; and 3) that a Ms. Guinn, who had spoken in opposition on March 13, specifically indicated a preference for the siting proposed by the applicant as alternative to the siting recommended by OPD.

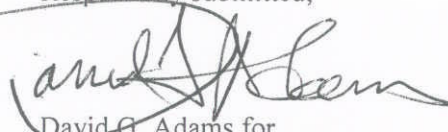
No one appeared in opposition at the scheduled 10 AM time for the April 10 hearing, which had been scheduled for the morning session due to an unusually light agenda. However **Betsy Guinn of 2290 Independence Rd.** appeared at the customary 1 PM hour and stated that she had been not aware of the 10 AM meeting time and that she continued to be in opposition --- primarily due to the view of the tower from the property upon which she resides. Her prepared remarks are included in Exhibit B of the staff report. She confirmed that she preferred the applicant's siting to the siting that had been recommended by OPD.

The Land Use Control Board reviewed the special use permit application and the report of OPD, including a decision by staff to support the approval of the application, based on the lack of opposition expressed at the public hearing and on the information provided by Ms. Allmond.

A motion was made and seconded to **approve** the application as stated above. This motion **passed** by a unanimous voice vote.

The Board concurred with the conclusions of the staff as expressed in the staff report.

Respectfully submitted,



David G. Adams for  
Mary L. Baker, Deputy Director  
Office of Planning and Development

## SITE PLAN CONDITIONS

S.U.P. 08-207 CC

CMCS CELL TOWER AT 7040 HIGHWAY 70

As Recommended by the Land Use Control Board

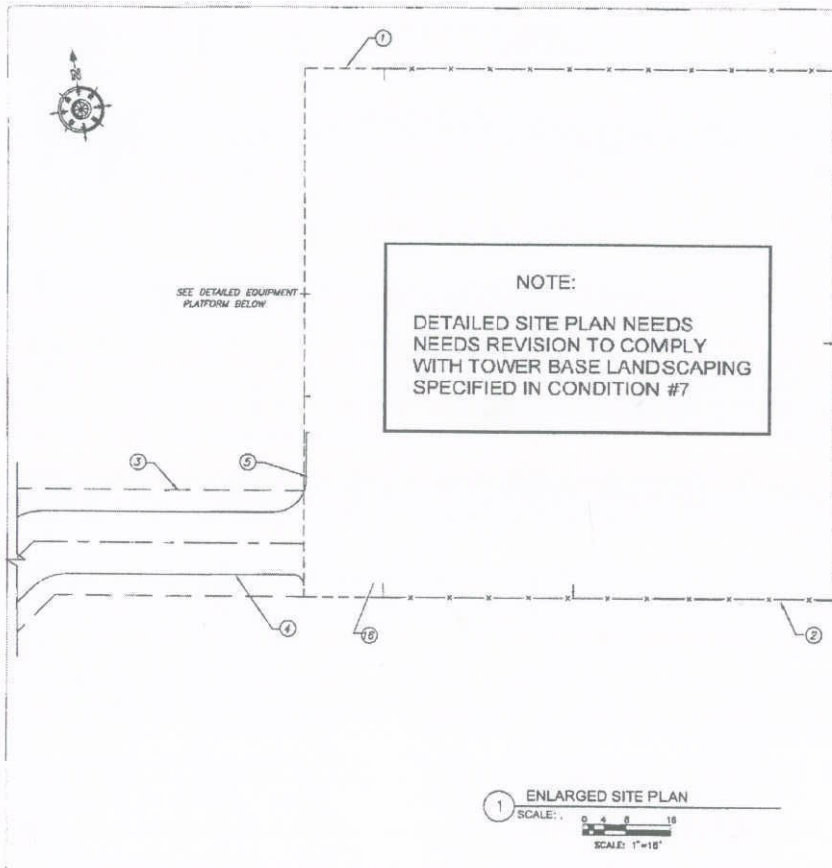
April 10, 2008

A Special Use Permit is hereby granted to the applicant **Global Signal, LLC** to allow construction and operation of a Commercial Mobile Communications Service (CMCS) Tower and ancillary facilities as specified below on the 11.97-acre property described in instrument number EG7382 as recorded in the Shelby County Register's Office, also known as 7040 Woodstock-Cuba Road in accordance with a site plan approved by the Office of Planning and Development and with the following supplemental conditions.

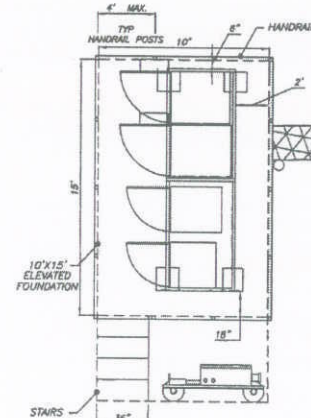
1. The maximum tower height shall be one-hundred ninety feet (195'), subject to Item 2 below, and the tower will incorporate the "slick stick" design with flush-mounted antennae.
2. The tower shall be free of all lighting, including aircraft hazard lighting, and shall be designed so as to avoid the necessity of such lighting under currently federal regulations.
3. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
4. The tower shall be constructed within two (2) years of approval by the Shelby County Board of Commissioners. The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within five-hundred (500') feet of the property.
5. The tower shall be structurally designed to accommodate at least six (6) additional sectorized arrays.
6. A security fence, six feet (6') or more in height shall be constructed around the tower and associated equipment.
7. The tower operator shall install and maintain perimeter screening as follows: The site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and within 40 feet of the site boundary. An equivalent alternative may be substituted with the approval of the Office of Planning and Development.
8. The access drive shall have an all-weather surface with asphalt pavement for the first 50 feet from Independence Road.
9. The location and design of the driveway access to Independence Road shall be subject to the review and approval of the County Engineer including the construction of any culverts that may be needed.
10. The location, design and construction of this tower shall be reviewed and approved by the County Engineer with respect to the issues identified in subsection D of the Floodway District regulations in Section 25 of zoning regulations. [Note: recommended by OPD staff subsequent to LUCB action; reflects siting preferred by applicant]







- LEGEND:**
- ① PROPOSED 100'X100' TOWER LEASE AREA (10,000 SQ'F)
  - ② PROPOSED 25'X100' FENCED COMPOUND (2500 SQ'F)
  - ③ PROPOSED 20' WIDE ACCESS ROAD
  - ④ PROPOSED 12 FT WIDE ACCESS ROAD
  - ⑤ PROPOSED TURN AROUND AND OFF STREET PARKING
  - ⑥ PROPOSED 195' MONOPOLE TOWER
  - ⑦ PROPOSED ICE BRIDGE (18'x4'-1/2')
  - ⑧ PROPOSED CRICKET 10'X50' LEASE AREA
  - ⑨ PROPOSED 4'-0"X13'-0" EQUIPMENT PLATFORM
  - ⑩ PROPOSED HANDRAIL
  - ⑪ PROPOSED CRICKET UTILITY CENTER
  - ⑫ PROPOSED 36" WIDE STAIRS
  - ⑬ PROPOSED GPS LOCATION
  - ⑭ PROPOSED METER BOARD
  - ⑮ PROPOSED CELLPAK H-FRAME
  - ⑯ PROPOSED 12 FT ACCESS GATE



**BARAN telecom**  
2001 Interstate 75, Suite 100  
 Nashville, TN 37203  
 Tel: (615) 440-1128

**cricket**  
communications

THE INFORMATION CONTAINED BY THIS SET OF DOCUMENTS IS PROPRIETARY OF BARAN. ANY USE OR REPRODUCTION OF THIS INFORMATION WITHOUT THE WRITTEN CONSENT OF BARAN IS STRICTLY PROHIBITED.

PROJECT NO: 210508													
SITE NAME: CARTER													
SITE NUMBER: MEM-1560													
SITE ADDRESS: 7040 WOODSTOCK CLUB RD MILLINGTON, TN 38053													
DESIGN TYPE: RAIN LAND													
DATE PROJECTED: 2/15/08	DATE: 2/15/08												
DRAWN BY: TKT	CHECKED BY: GAT												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">REVISIONS</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>		REVISIONS											
REVISIONS													
<small>DATE FOR DESIGN REVIEW: 2/15/08          DATE FOR CONSTRUCTION:  </small>													
SHEET TITLE: ENLARGED SITE PLAN													
DRAWING NO: A-2	REVISION: A												

**PRELIMINARY SITE PLAN  
LEASED PARCEL**

## LAND USE OWNERSHIP DISCLOSURE

Please identify every person who has an ownership interest of 10% or more in the subject application whether they be the current owners, the contract buyers, or the lenders. If current owners or contract buyer are public corporations, please note the fact and list no other owners. Only lenders which are not institutions (banks, saving and loans or credit unions) need be listed.

	NAMES	ADDRESSES
<u>CURRENT OWNERS</u>	<u>DeAnna Carter</u>	<u>7040 Woodstock Cuba Road</u>
	<u></u>	<u>Millington, TN 38053</u>
	<u></u>	<u></u>
	<u></u>	<u></u>
<u>CONTRACT OWNERS/BUYERS</u>	<u>Global Towers LLC</u>	<u>1801 Clint Moore Rd.</u>
	<u>Eric Garvin</u>	<u>Suite 110.</u>
	<u>Michael J. Belski</u>	<u>Boca Raton, FL 33487</u>
	<u></u>	<u></u>
<u>NON-INSTITUTIONAL LENDERS INCLUDING SELLER(S) IF THE PENDING SALE IS OWNER FINANCED</u>	<u></u>	<u></u>
	<u></u>	<u></u>
	<u></u>	<u></u>
	<u></u>	<u></u>

## GRATUITY DISCLOSURE FORM

### Shelby County Ethics Commission

**INSTRUCTIONS:** This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.

1. NAME

Valerie Allmond

2. DATE OF GRATUITY

N/A

3. NATURE AND PURPOSE OF THE GRATUITY

N/A

4. NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY

N/A

5. NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY

N/A

6. ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY

N/A

7. DESCRIPTION OF THE GRATUITY

N/A

8. COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)

N/A

9. The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.

Valerie Almond  
Signature

1/29/08  
Date

Valerie Almond  
Print Name



# FISCAL IMPACT STATEMENT

	Units	Average Appraised Value per Unit	Total Appraised Value	Total Assessed Value	Average Pupils Per New Unit	Pupils
Cell Tower - Cuba-Woodstock Project Profile						
Residential (dwelling units)	0	\$0	\$0	\$0	0.62	0
Residential - single family, detached	0	\$0	\$0	\$0	0	0
Residential - single family, attached	0	\$0	\$0	\$0	0	0
Residential - mobile home	0	\$0	\$0	\$0	0	0
Residential - multi-family	0	\$0	\$0	\$0	0	0
Subtotal						
Commercial (square feet)						
Commercial - office	0	\$0	\$0	\$0		
Commercial - retail	0	\$0	\$0	\$0		
Commercial - hotel/motel	0	\$0	\$0	\$0		
Commercial - office	0	\$0	\$0	\$0		
Subtotal	0	\$0	\$0	\$0		
Industrial (square feet)	6400	\$10	\$64,000	\$25,600		
Project total			\$64,000	\$25,600		
Project-related expenditures						
General purpose	\$1,090					
Transfers						
Transfers to the Med	\$0					
Transfers to Shelby County Bd of Ed	\$0					
Transfers to City of Memphis Bd of Ed	\$0					
Debt service						
Schools	\$0					
Roads	\$1,013					
All other	\$70					
Total expenditures	\$2,173					
Product-related revenue						
Local taxes	\$1,218					
Local revenue	\$36					
State source	\$84					
Elected officials	\$89					
Investments, misc, other	\$15					
Capital proffers (annualized)	\$0					
Total revenue	\$1,442					
Net project fiscal impact						(\$731)

Note: Valuations based on "rule of thumb" data provided by the Assessor's Office several years ago. The incremental valuation is taxed through the State Comptroller's office.

Note: Road traffic generated by a cell tower is minimal except during the initial construction and the addition of collocating antennae. A 75% reduction in the standard allocation for debt service on road construction would result in a zero net impact, based on these estimates.

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT**  
**STAFF REPORT**

**#11**

**CASE NUMBER:** S.U.P. 08-207 CC

**L.U.C.B. MEETING:** April 10, 2008

*This report has been updated to include information presented at the second Land Use Control Board hearing on this case, which was held by the Board at its 3/13 Meeting; Exhibit B includes remarks from a neighborhood resident who was misinformed about the time of the 2<sup>nd</sup> hearing.*

**LOCATION:** North side of Independence Rd;  $\pm$  250 ft. east of Woodstock-Cuba Road

**OWNER OF RECORD:** DeAnna Carter

**LESSOR/APPLICANT:** Global Tower, LLC

**REPRESENTATIVE:** Valerie Allmand (*Baran Telecom*)

**REQUEST:** Cell Tower (CMCS – 195 ft. monopole)

**AREA:** 11.97 Acres

**EXISTING LAND USE & ZONING:** Agricultural (AG) and Floodway (FW) District

**SURROUNDING USES AND ZONING:**

**North:** Single-family residences and vacant tracts in the AG District

**East:** Single-family residences on estate-sized tracts fronting on Independence Road, and vacant parcels in the AG District

**South:** Across Independence Road, single-family residences on estate-sized tracts and vacant land, all in the AG District

**West:** Adjoins a single family residence; across Woodstock-Cuba Road, Single-family residences on small lots and single-family estate residences on tracts larger than 4 acres in the AG District

**OPD RECOMMENDATION (4/10):** Approval with Conditions --- After the public hearing OPD had no objection since there was no indication that the neighborhood shared OPD's concerns about design issues.

**LUCB DECISION (3/13):** Hold for 30 days for balloon test and applicant meetings with neighborhood residents

**CONCLUSIONS**

1. *The applicant appears to have presented evidence that additional CMCS service is needed in this area, but the possibility of finding a most suitable location should be considered further.*
2. *If the subject property is considered the preferred location, the siting of the tower needs to be closer to the center of the property so as maximize setback from the roads and adjoining residences.*



**Figure 1: VICINITY MAP**  
**LOCATION OF SUBJECT PROPERTY**  
(Licensed by Rand McNally & Company for limited distribution)



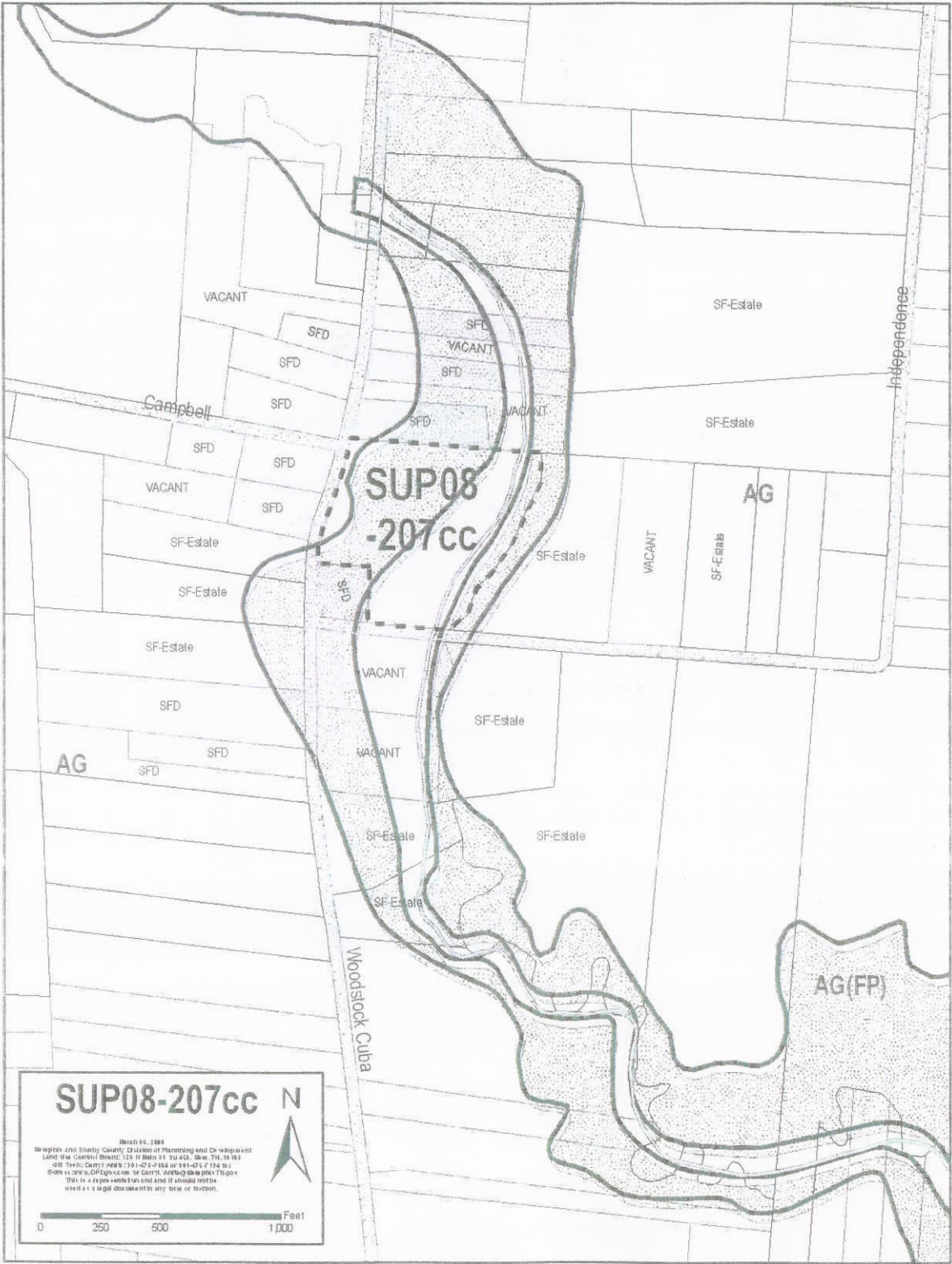


Figure 2: Land Use and Zoning in the Vicinity

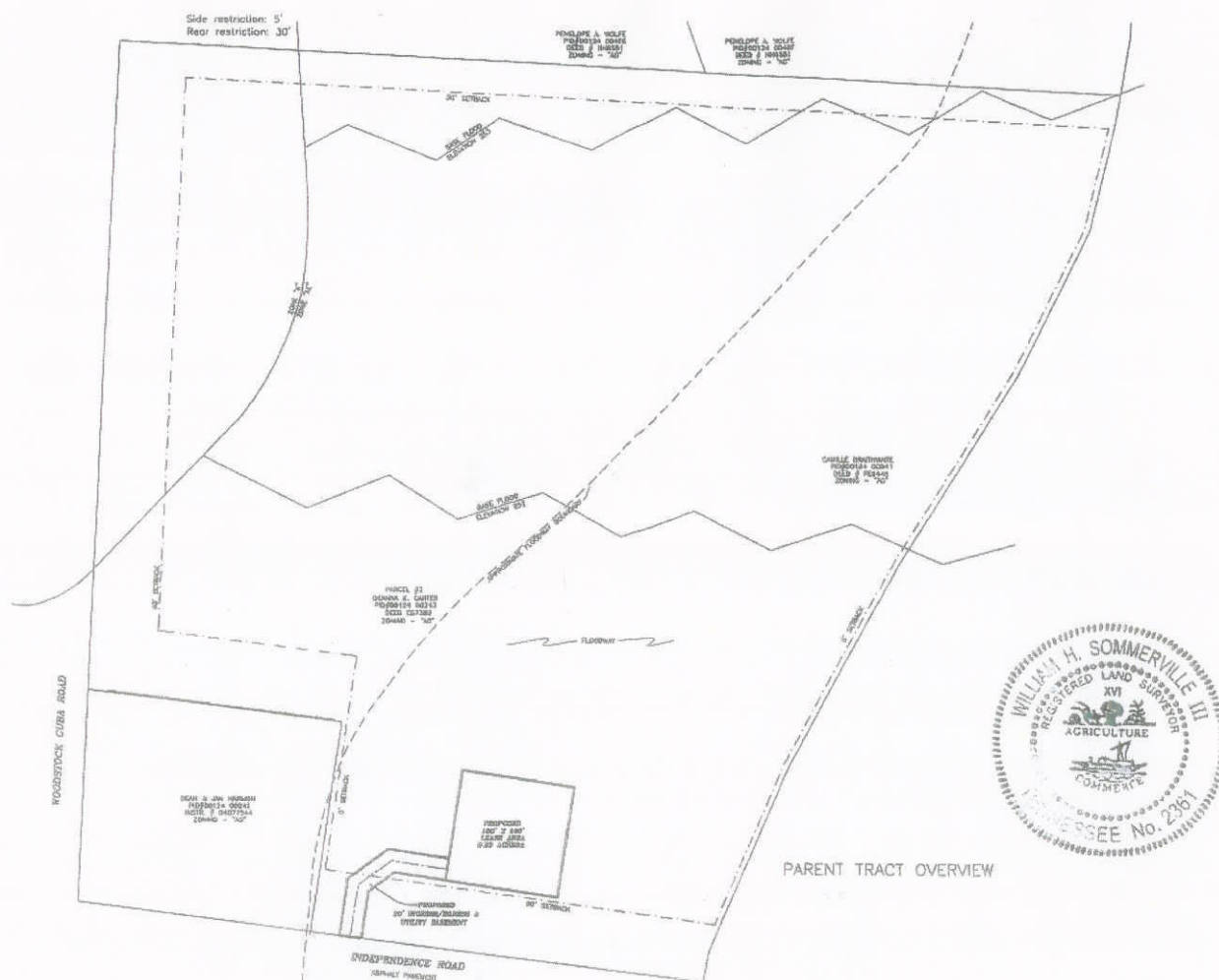


**Figure 3: Overhead View of Vicinity**





**Figure 4: Detailed view of subject property**



**Figure 5: Site Plan – Overview of Parent Tract**  
Drawing by SMW Engineering Group, Pelham Alabama

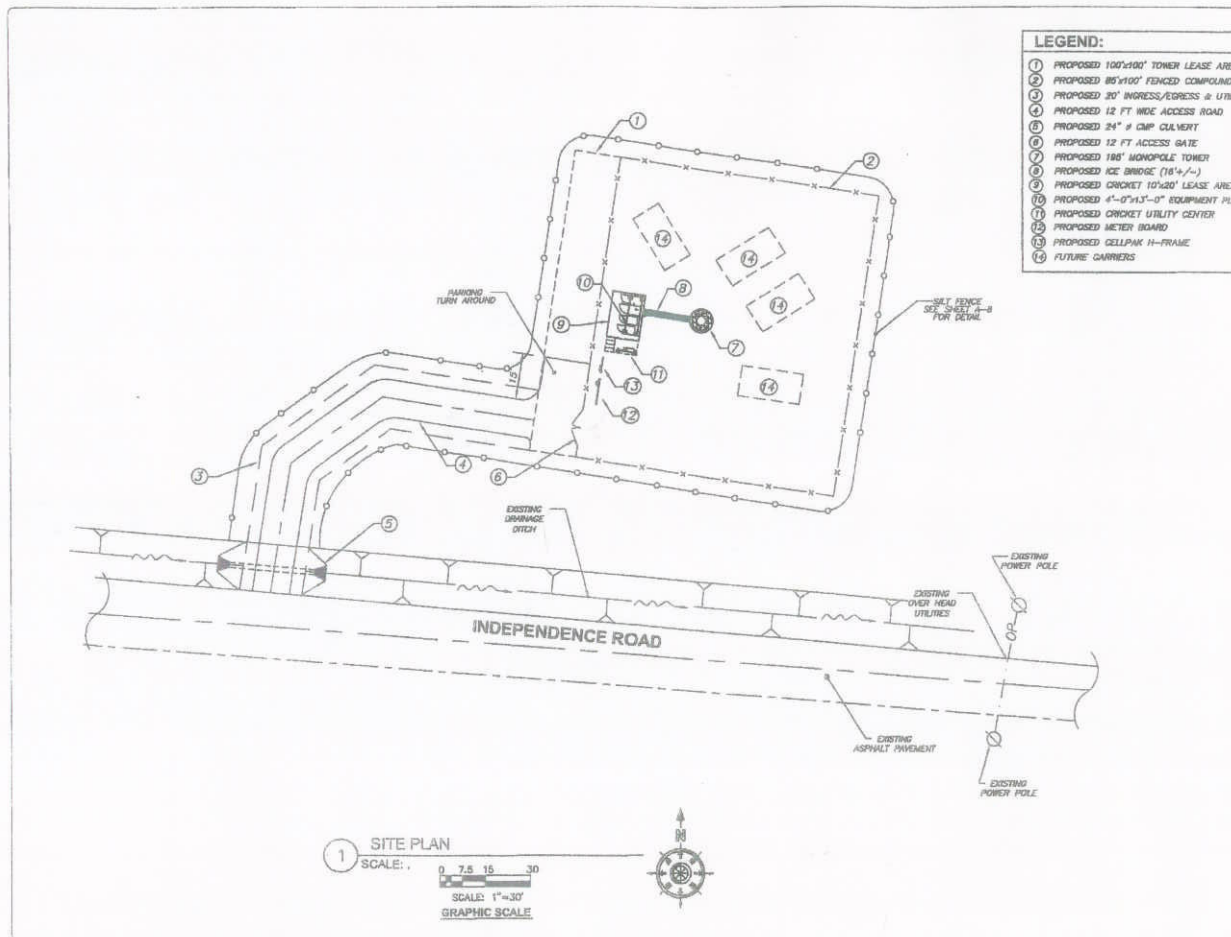
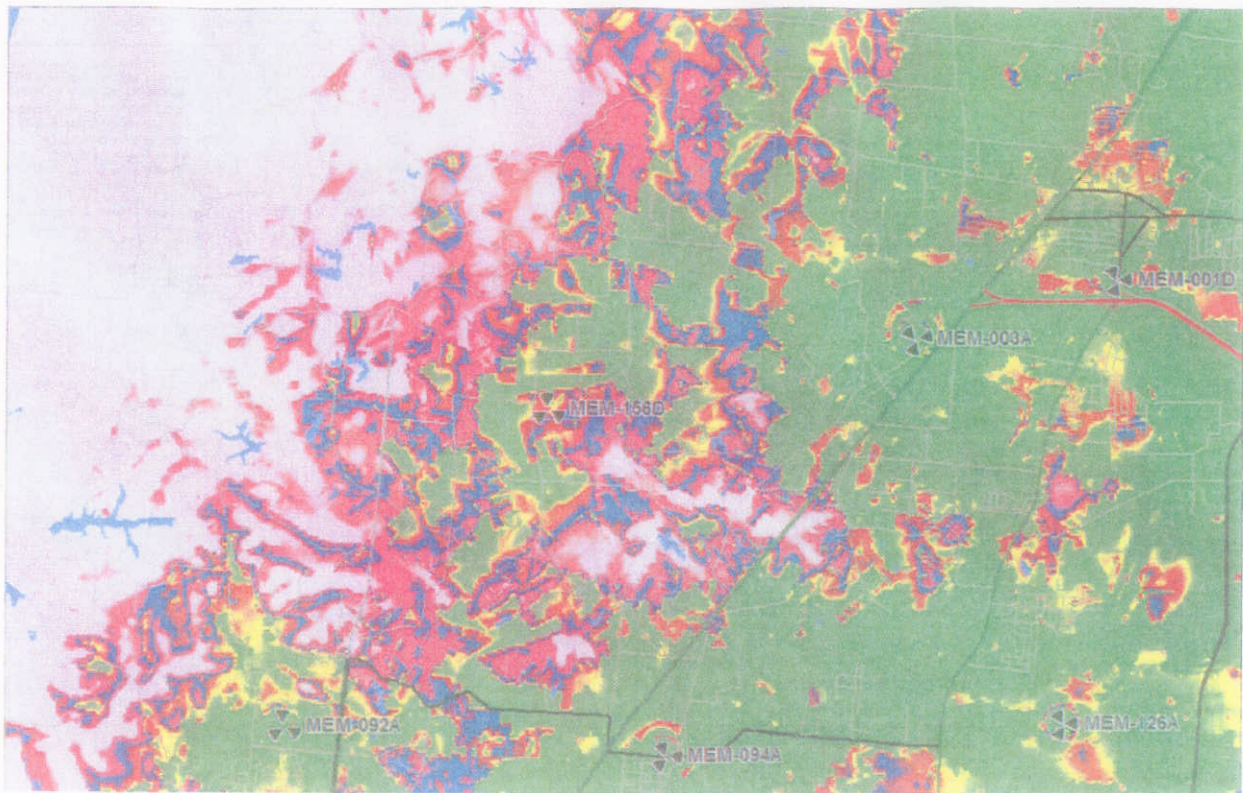


Figure 6: Site Plan for Leasehold / Tower Site

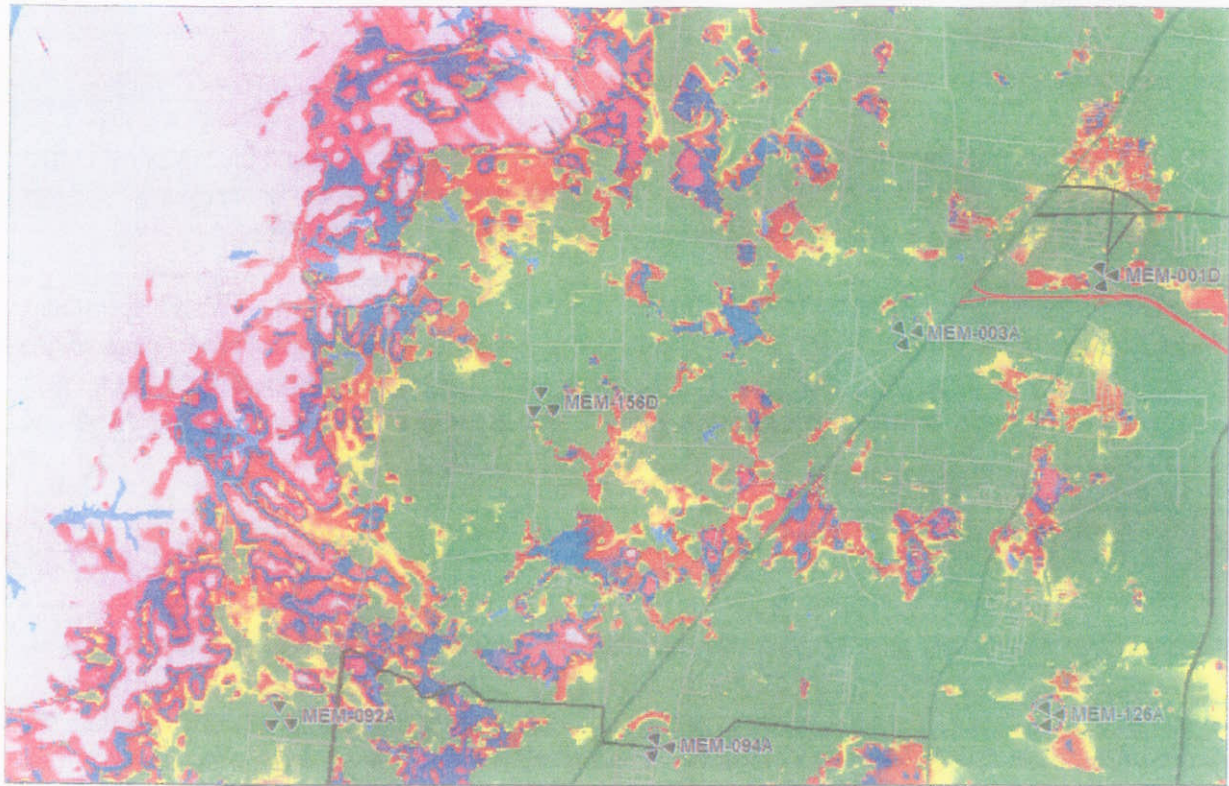




**Figure 7: Model of Current Coverage  
By Prime Carrier / Tenant for Proposed Tower  
(The tower site is at the center of this image)**

**KEY TO COVERAGE LEVELS AS MAPPED**

- Green - Excellent Coverage
- Yellow - Good coverage
- Red - Borderline coverage
- Blue - Bad coverage
- Purple - Signal level detected by the phone, not good enough to serve calls
- Grey - Signal level below what the phone can detect



**Figure 8: Model of Proposed Coverage  
By Prime Carrier / Tenant Using the Proposed Tower  
(The tower site is at the center of this image)**

**KEY TO COVERAGE LEVELS AS MAPPED**

Green - Excellent Coverage

Yellow - Good coverage

Red - Borderline coverage

Blue - Bad coverage

Purple - Signal level detected by the phone, not good enough to serve calls

Grey - Signal level below what the phone can detect



## STAFF ANALYSIS

### Site Characteristics

The subject property consists of a 12-acre irregularly-shaped tract located around the northeast corner of Woodstock-Cuba and Independence Road. Immediately at that corner, a one-acre parcel appears to have been carved out of the larger tract as a site for a single-family residence.

The subject property is occupied by a single-family residence along the western --- Woodstock-Cuba --- frontage. The character of the property is gently rolling with cover that appears to be pasture. At the rear of the house is a barn, and horses are kept there. The eastern boundary of the subject property is a tree-lined stream, with a relatively dense woodland area near the Independence Road frontage.

### Vicinity and Neighborhood

Woodstock-Cuba and Independence Road are rural roads that are lined with residences at varying distances depending on the size of the tracts that they sit on. The rural housing development along Independence Road is the more recent, with homes and tracts that tend to be larger and more estate-like. In the Woodstock-Cuba area the homes tend to be on smaller lots, with several less than the four acre minimum that, since 1955, requires a recorded subdivision for lots of such size. This section of Woodstock-Cuba has more the appearance of a rural community, whereas Independence seems like a very low density suburban (or exurban) area.

It should be noted that County Fire Station #64 is located on a small site about ½ to the northeast at the intersection of Independence Road and Garnet Road. At that location, there some recent development nearby that is a bit more intensive than the vicinity of the subject property at Independence and Woodstock-Cuba. Due to the nearby development and the size of the property, this fire station is not viewed as a promising alternative location for the use being requested in this application.

### Proposed Development

The applicant, Global Tower, LLC, wishes to develop a cell tower site on the subject property as described above. The carrier seeking the new service is Cricket Communications, whose signal propagation maps in Figure 7 & 8 indicate the situation that would be remedied by the tower. The applicant is requesting a tower height of 195' feet, just short of the height requiring aircraft warning lights. This height would allow several other carriers to locate on this tower, maximizing its usefulness and reducing any pressure to build additional towers in this vicinity.

### Planning Issues

A Commercial Mobile Communications Service (CMCS) tower (commonly known as a cell tower) is allowable in the Agricultural (AG) District, subject to certain particular conditions which apply to

this use<sup>1</sup>; a set of general conditions that apply to all special use permits<sup>2</sup>; a unique set of conditions

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<sup>1</sup> [Standards for CMCS Towers]

v. CMCS facilities subject to the following additional standards:

- (1) Within residential zoning districts, CMCS facilities, support structures and associated attachments shall be encouraged to locate on publicly owned and/or leased properties, public/private utility owned properties, or institutional uses.
- (2) The location, size and design of such facilities shall be such that minimal negative impact results from the facility. Any application for a new CMCS tower shall not be approved nor shall any building permit for a new CMCS tower be issued unless the applicant certifies that the CMS equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or other structure due to one or more of the following reasons:
  - (a) The planned equipment would exceed the structural capacity of existing and approved structures, considering existing and planned use of those structures, and those structures cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
  - (b) The planned equipment would result in technical or physical interference with or from other existing or planned equipment and the interference cannot be prevented at a reasonable cost.
  - (c) There are no appropriate existing or pending structures to accommodate the planned equipment, taking into account, among other factors, the applicant's system requirements.
  - (d) Other reasons that make it impractical to place equipment planned by the applicant on existing and approved structures.
- (3) Applications for CMCS facilities to be located on publicly owned and/or leased properties, including without limitations, public parks, the following criteria shall apply:
  - (a) The CMCS facility will not unduly interfere with the functions or aesthetics of the city park or property.
  - (b) A CMCS facility shall not be located on any public park less than ten acres in size.
  - (c) Minimum distance between any CMCS facility and any playground shall be equal to 1 1/2 times the height of the tower.
  - (d) The use of an existing tower or existing support structure is not technically, structurally, economically and/or financially feasible.
  - (e) The proposed facility has adequate capacity to handle a minimum of three additional users.
  - (f) All towers shall be a "stealth" application or consistent with the natural or built environment or the site. Landscaping and screening may be required in addition to the minimum requirements of this ordinance.
  - (g) Obstruction lighting and/or marking shall not be permitted in public parks or on public school properties. On other public properties, proposed lighting may be approved by the city council and/or county commission as an element of the special use permit site plan and conditions.
  - (h) Any CMCS facility which has ceased operations for a period of 180 continuous days shall be dismantled and removed from the site at the owners expense. Prior to the issuance of a building permit for such CMCS facility, adequate financial security not to exceed \$20,000.00 shall be posted with the building official to assure the dismantling, removing and restoring of the public property/park upon which the CMCS facility will be located.
  - (i) The planned equipment will not interfere with emergency communications including without limitation those of the Memphis Fire and Police Departments, the county fire department and/or the county sheriff's department as substantiated through a RF (radio frequency) study. If interference occurs, proper remediation steps shall be taken.
- (4) Any proposed tower shall be structurally designed to accommodate at least three additional CMCS sectorized antennae array if at least 100 feet in height, at least five additional CMCS sectorized antennas if at least 150 feet in height or at least six additional CMCS sectorized antennas if at least 170 feet in height. Colocated CMCS antennas shall be placed on a structure in such a manner as to avoid interference with or impairment of operations of existing antennae or other uses.
- (5) Nothing in these rules and regulations shall obligate the owner of an existing tower to colocate additional antennas on such tower or be construed to interfere with or limit the rights of parties to set rent or establish other terms and conditions of the shared use of a CMCS tower or facility.
- (6) The minimum setback requirement for support structures including associated attachments shall correspond to the zoning district in which they are located, except that a minimum buffer equal to the height of the tower shall be maintained between any support structure (excepting sites incorporating stealth design) and any single-family residentially zoned or used property line.
- (7) Accessory facilities shall be permitted but may not include offices, long-term vehicle storage, other outdoor storage, or broadcast studios, except for emergency purposes or other uses that are not needed to send or receive transmissions.
- (8) Existing on-site vegetation shall be preserved to the maximum extent practicable and shall be supplemented as required by the office of planning and development as necessary. Where the site abuts residentially developed land, residential zoning districts, the residential portion of an approved planned development, or public land or streets, the site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and



tailored to the site, and a detailed site plan. Under most circumstances a final requirement is the approval of a legislative body, in this case the Shelby County Board of Commissioners.

Cell towers are often necessary in residential areas but never popular. When as in this case, the property borders residential land (e.g. R- and AG Districts), a tower design for residential compatibility is required according to current policy. In this case, staff would specify, the so-call slick-stick design, with flush-mounted antennae.

One of the functions of the OPD staff review is to determine whether another location would be superior. A review of alternative locations has been conducted, as presented in Exhibits A-1 & A-2, Based on this review, it appears that several nearby alternative sites have been considered and apparently been determined to be unavailable. The Federal Telecommunications Act of 1996 does not permit local government regulation to a degree that excludes wireless carriers. In the absence of a specific rationale for widening the search for alternative sites, OPD is willing to support this site as the only practical alternative.

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within 40 feet of the site boundary. Alternatives such as walls or fences may be permitted based on security or other reasons.

- (9) Security fencing shall be required around the base and guy anchors of any towers.
- (10) Towers shall not be artificially lighted unless:
  - (a) Required by the Federal Aviation Administration or other governmental authority;
  - (b) Circumstances make lighting appropriate for safety or other reasons unique to a specific application that are set forth in that application, but in no case shall any lighting shine into adjacent residential structures.
- (11) The application for a special use permit approval shall include the following:
  - (a) A site plan drawn showing the property boundaries, tower, guy wire anchors (if any), existing structures, proposed transmission buildings and/or other accessory uses, access, parking, fences, a landscaping plan and existing abutting land uses around the site.
  - (b) A study from a professional engineer which specifies the tower height and design, including a cross-section of the structure, demonstrates the tower's compliance with applicable structural standards, including a certification that the tower will withstand at a minimum sustained winds in accordance with the appropriate building code, and a description of the tower's capacity, including the number and type of antennas which it can accommodate.
  - (c) Written statements that the proposed tower will comply with regulations administered by the Federal Aviation Administration, Federal Communications Commission, and all applicable governmental bodies, or that the tower is exempt from those regulations.
  - (d) A letter of intent committing the tower owner and his or her successors to allow shared use of the tower, if capacity exists, based on existing and planned use, and if a future applicant agrees in writing to pay any reasonable charge of shared use, the potential use is technically compatible and the future applicant is in good standing.
- (12) The minimum setback requirements of chart 2 shall apply to the equipment, structures, and other buildings which are auxiliary to functions of the CMCS tower except as specified in 9v.(6) of this ordinance. Exceptions to the minimum setback requirements may be permitted. The tower height shall not be used to calculate the minimum setback requirements. The height restrictions of chart 2 do not apply to tower height and the height permitted for each new application shall be set on the basis of its own merits.
- (13) Any CMCS tower and equipment shall be removed no later than 180 days after ceasing operations.

**2 [Standards of General Applicability]** 1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.

2. That the proposed building or use will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.

3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.

4. That the proposed building or use will not result in the destruction, loss or damage of any feature determined by the legislative body to be of significant natural, scenic or historic importance.

5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use.

OPD staff believes that the tower site is unnecessarily close to the nearby residence on the one-acre tract at the corner of Independence and Woodstock-Cuba. Furthermore the location is closer to Independence Road than is desirable or necessary. Most drivers would prefer to have cell towers as much out of sight as possible. Therefore if the subject property is confirmed as the optimum site, staff requests a redesign to place the tower approximately in the middle of the parent tract. Staff can not support the current siting. **[However after the second Land Use Control Board hearing, the final OPD recommendation was "no objection", since there was no indication that the neighborhood shared OPD's concerns. 5/12/2008 Update]**

The main reason for the Land Use Control Board's one-month hold was to give the applicant an opportunity to conduct a balloon test and confer with neighbors. Ms. Allmond, the applicant's representative did conduct a balloon test on March 5. She reported that the neighbors, in general did not object and that the preferred location siting was where the applicant was requesting it --- near the existing house and Independence Road.

*[Note: Betsy Guinn of 2290 Independence Road had intended to speak in opposition; however she did not appear at the correct time and missed the opportunity. (Due to a light agenda, all cases were handled in the morning session.) The remarks that Ms. Guinn had intended to make have been included appear in Exhibit B and should be considered part of the record for the Land Use Control Board hearing.]*

*It should be noted that, although being generally opposed to the tower, Ms. Guinn prefers the applicant's siting, near Independence Road, instead of the location farther back on the property as recommended by OPD staff. 5/12/2008 Update]*

**RECOMMENDATION:**      Approval with Conditions --- After the public hearing OPD had no objection to since there was no indication that the neighborhood shared OPD's concerns about design issues.

#### **TYPICAL SITE PLAN CONDITIONS**

A Special Use Permit is hereby granted to the applicant **Global Signal, LLC** to allow construction and operation of a Commercial Mobile Communications Service (CMCS) Tower and ancillary facilities ... in accordance with a site plan approved by the Office of Planning and Development and with the following supplemental conditions.

1. The maximum tower height shall be one-hundred ninety feet (195'), subject to Item 2 below, and the tower will incorporate the "slick stick" design with flush-mounted antennae.



2. The tower shall be free of all lighting, including aircraft hazard lighting, and shall be designed so as to avoid the necessity of such lighting under currently federal regulations.
3. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
4. The tower shall be constructed within two (2) years of approval by the Shelby County Board of Commissioners. The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within five-hundred (500') feet of the property.
5. The tower shall be structurally designed to accommodate at least six (6) additional sectorized arrays.
6. A security fence, six feet (6') or more in height shall be constructed around the tower and associated equipment.
7. The tower operator shall install and maintain perimeter screening as follows: The site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and within 40 feet of the site boundary. An equivalent alternative may be substituted with the approval of the Office of Planning and Development.
8. The access drive shall have an all-weather surface with asphalt pavement for the first 50 feet from *[the public right of way]*.
9. The location and design of the driveway access to *[the public right of way]* shall be subject to the review and approval of the County Engineer including the construction of any culverts that may be needed.

## GENERAL INFORMATION

<b>Parcel Number:</b>	D0124 00243
<b>Approximate Tower Coordinates:</b>	35° 19' 04"N, 89° 59' 32"W
<b>Street Address:</b>	2148 Independence Road, 38053
<b>Street Frontage:</b>	Independence Road - ±330 feet; Cuba-Woodstock - ±530 ft.
<b>Planning District:</b>	Northwest Shelby
<b>Census Tract:</b>	201
<b>Annexation Status:</b>	Designated Rural in the Shelby County Growth Plan
<b>Zoning Atlas Page:</b>	1335

## DEPARTMENTAL COMMENTS

The following comments were provided by agencies to which this application was referred:

### City Engineer:

1. This site is located in the Memphis Reserve Area.

### Curb Cuts/Access:

2. The County Engineer shall approve the design, number and location of curb cuts.
3. Any existing nonconforming curb cuts shall be modified to meet current County Standards or closed with curb, gutter and sidewalk.
4. The developer should be aware of his obligation under 40 CFR 122.26(b) (14) and TCA 69-3-101 et. seq. to submit a Notice of Intent (NOI) to the Tennessee Division of Water Pollution Control to address the discharge of storm water associated with the clearing and grading activity on this site.
5. Adequate queuing spaces in accordance with the current ordinance shall be provided between the street right-of-way line and any proposed gate/guardhouse/card reader.
6. Adequate maneuvering room shall be provided between the right-of-way and the



gate/guardhouse/card reader for vehicles to exit by forward motion.

7. Required landscaping shall not be placed on sewer or drainage easements.

**County Engineer:**

1. To keep soil and gravel off public streets, the private ingress/egress drive should have 25' of asphalt pavement where it connects to Independence Road.
2. A driveway permit is required for a culvert connection to Independence Road from the County Engineer and the engineer is responsible for calculating the proper culvert size.

**City Fire Division:** No comments received.

**County Fire Department:** No comments received.

**City Real Estate:** None.

**County Real Estate:** No comments received.

**City/County Health Department:**

1. The Water Quality Control Branch has no comments.

**City Board of Education:** No comments received.

**County Board of Education:**

**Construction Code Enforcement:** No comments received.

**Memphis Light, Gas and Water:**

MLGW has reviewed the referenced application, and has no objection, subject to the following comments:

- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- Any proposed structures must comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances from existing overhead electric facilities.

- **Landscaping is prohibited** within any MLGW utility easement. No trees, shrubs or permanent structures will be allowed within any MLGW utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL @ 1.800.351.1111**, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc
- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s).
- **It is the responsibility of the owner/applicant** to contact the appropriate MLGW engineering area to determine if system improvements may be required and any related cost:
  - MLGW Engineering - **Residential Development:** 528-4858
  - MLGW Engineering - **Commercial Development:** 367-3343
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

<b>Bell South / Millington Telephone:</b>	No comments received.
<b>Memphis Area Transit Authority (MATA):</b>	No comments received.

**OPD-Regional Services:**

This application was reviewed by the MPO staff/Department of Regional Services on February 15, 2008. This application, as submitted, will have no affect on the MPO Long Range Transportation Plan, Transportation Improvement Program, or any other plan, document, program or initiative of this department/organization

<b>OPD-Plans Development:</b>	No comments.
<b>Division of Park Services:</b>	No comments received.
<b>County Conservation Board:</b>	No comments received.
<b>County Sheriff:</b>	No comments received.
<b>Neighborhood Associations:</b>	None identified

**REVIEW OF ALTERNATE SITES  
SUP 08-207**

<b>ID #</b>	<b>PARCEL NUMBER</b>	<b>OWNER</b>	<b><u>REASON FOR REJECTING</u></b>
A	D0124 00358	Shelby County (Fire Station)	Inadequate space for tower & compound. Too close to residences; direct view from several houses; wouldn't meet setback requirements or fall zone requirements.
B	D0124 00021	Cuba-Woodstock Saddle Club	Owner unwilling to sign a lease; adjacent land owner wouldn't allow spill over parking from the Saddle Club under those circumstances.
C	D0124 00514*	Hammontree, D.E.	Unable to qualify landowner. Not successful in obtaining a lease. Power and Telco ( <i>ground line phone link</i> ) not available. Tree removal to construct access drive. Cost prohibitive and severely detrimental to client.
D	D0124 00259* (at the rear)	Smith, R C	Unable to qualify landowner. Parcel was too far away from Highway 51, and [therefore] would not meet coverage objective, leaving holes in coverage and greater risk of dropped calls.
E	D0124 00241	Brathwaite, C	Owner unwilling to sign a lease or place tower on property.

- These are representative sites; other, nearby properties of similar characteristics might also be appropriate



LOCATION OF ALTERNATE SITES FOR REVIEW



Untitled

MY NAME IS BETSY GUINN AND I LIVE AT 2290  
INDEPENDENCE RD

SINCE I KNOW MINDS HAVE ALREADY BEEN MADE UP ON  
THIS CELL TOWER, I CALLED MY LOCAL REPRESENTATIVE  
OPHELIA FORD TO ASSIST ME IN MY QUEST, I AM STILL  
WAITING ON A CALL BACK..IMAGINE.  
TERRY ROLAND SAID HE WOULD ACCOMPY ME HERE BUT I  
ASSURED HIM I WOULD MUDDLE THROUGH THIS ON MY  
OWN.

THE BALLOON TEST WAS MADE AND I HAD A CHANCE TO  
TALK TO VALERIE ALMOND AT LENGTH, SHE IS VERY NICE  
AND REALLY TRYING TO WORK THIS DELIMA OUT. BUT AS  
WE ALL KNOW, EVERYONE HAS A JOB AND HERS IS TO GET  
THIS CELL TOWER IN. SHE DID MENTION TO ME THEY HAD  
AN ALTERNATE SITE FIRST BUT THE LAND OWNER WOULD  
NOT AGREE I WONDER WHY,

AND IF ANYONE IS INTERESTED I WILL HAVE A BEAUTIFUL  
VIEW OF IF FROM MY PROPERTY.  
I FIND IT FUNNY THAT VALERIE ALMOND IS PUSHING FOR A  
CELL PHONE TOWER FOR CRICKET IN MY AREA WHEN SHE  
USES VERISION FOR HER CELL PHONE CARRIER.  
AS MOST PEOPLE KNOW CRICKET IS A INEXPENSICE CARRIER  
MOST TEENAGERS USE OR PEOPLE WHO DO NOT TRAVEL  
OUTSIDE ~~OF~~ THE CITY CAN USE. I CAN GUARANTEE YOU  
CRICKET ~~WILL~~ NOT REACH TO ALAKSA LIKE MY ATT CELL  
PHONE DOES.

Page 1

I GAVE HER PHONE NUMBERS AND NAMES OF MY  
NEIGHBORS AND AGAIN SHE INSISTS I AM THE ONLY ONE  
CONTESTING THIS.

THERE ARE 7 HOUSES ON MY STREET, WITH ONLY MYSELF  
AND ONE OTHER COUPLE THAT ARE NOT 70 YEARS OLD AND  
ABOVE.

AGAIN I WILL STATE YOU ARE DEALING WITH OLDER  
RESIDENTS THAT DO NOT UNDERSTAND THAT JUST  
BECAUSE THERE IS A CELL PHONE TOWER THEY ASSUME  
THEIR CELL PHONE WILL WORK, VALERIE ALMOND EVEN  
ADVISED MY NEIGHBORS THERE IS A CHANCE THEIR CELL  
PHONES MIGHT WORK, BUT SHE CANT GUARANTEE THIS.  
WORKING IN INFORMATION TECHNOLOGY FOR 18 YEARS I  
KNOW HOW THE GAME IS PLAYED AND I DONT APPRECIATE  
OLDER RESIDENTS BELIEVING THINGS I KNOW ARE NOT  
TRUE,

LAST MEETING IT WAS MENTIONED THIS IS CONSIDERED A  
UTILITY, LETS TALK ABOUT THAT FOR A MINUTE.

I CHOSE TO LIVE IN A HERENTON FREE ZONE AND HAVE  
NEVER COMPLAINED ABOUT OUR AREA.

WE HAVE MLG@W , OF COURSE IF THE WIND BLOWS HARD  
THE LIGHTS GO OUT, I DO GET CITY WATER. OTHER THAN  
THAT THERE ARE NO UTILITIES ON OUR STREET.

THERE ARE NO STREET LIGHTS , WHICH WE LOVE  
I PAY FOR GARBAGE PICKUP  
I PAY FOR FIRE PROTECTION  
I HAVE A SEPTIC TANK

Page 2

AND THERE ARE NO SIDE WALKS

I ASKED BACK IN 2004 IF I WOULD BE ABLE TO GET NATURAL GAS AND WAS ADVISED BY MLG@W I SURE COULD FOR 9,000 .  
OR

I COULD WAIT TILL 2005 WHEN THE COUNTY WAS TO HAVE EVERYONE IN MY AREA ON NATURAL GAS.

AS WE ALL KNOW MLG@W RAN OUT OF MONEY IN THE GAS BUDGET.

AND LORD KNOWS WHEN / IF THEY WILL EVER GET THE MONEY, AND YET I STILL DO NOT COMPLAIN BECAUSE I LOVE THE AREA I LIVE IN.

SO 3 YEARS LATER I AM SURROUNDED BY HOUSES IN MY AREA WITH NATURAL GAS, IN FACT I CAN SEE HOUSES AROUND THE CORNER FROM ME THAT HAVE HAD NATURAL GAS FOR OVER 5 YEARS, BUT THE 7 HOUSES ON MY STREET ARE NOT ALLOWED, OR THE UTILITY COMPANY CANT AFFORD TO BRING IT TO MY STREET.

SO

I STILL GET SCREWED BY BABE HOWEARD EVERY MONTH AND IF YOU THINK GAS FOR YOUR CAR IS EXPENSIVE TRY FILLING UP A PROPANE TANK TO USE JUST FOR HEAT, IT IS SO EXPENSIVE I KEEP MY HOUSE AT 66 DURING THE WINTER AND PASS OUT BLANKETS TO GUESTS AS THEY ARRIVE.

I AM NOT COMPLAINING JUST STATING FACTS.

WE HAVE SURVIVED FOR YEARS WITHOUT MANY UTILITIES IN OUR AREA AND HAVE BECOME QUITE USED TO BE SELF

Page 3

EXHIBIT B-3 - Page 3  
PREPARED REMARKS IN OPPOSITION

SUFFICIENT IN THE COUNTY.

IN SPEAKING WITH VALERIE ALMOND I WAS ADVISED THEY CANT PUT A TREE LOOKING TOWER UP BECAUSE IT ONLY GOES TO 130 FEET AND THEY NEED THE TOWER TO BE 195 FEET....JUST 5 FEET SHORT OF WHAT THE FAA REQUIRES FOR LIGHTS ON THE TOWER, BUT CAN SHE GUARANTEE THIS WILL BE THE RULE FROM THE FAA IN 6 MONTHS...DOUBTFUL. I EVEN POINTED OUT I SIT BETWEEN 2 SMALL LOCAL AIRPORTS NOT INCLUDING THE POLICE AND FIRE ACADEMYS NEAR BY, AND SEE HELICOPTERS FLYING PRETTY LOW, BUT WAS REASSURED THESE REQUIREMENTS COME FROM THE FAA AND IF THEY FLY LOWER THAT IS PILOT ERROR.

I DO NOT WANT THIS TOWER IN MY AREA AND EMPLOYE YOU TO RECONSIDER IN HAVING THEM RELOCATE IT SOME WHERE ELSE, TRY THE CITY, ANYTHING GOES THERE.

I LOVE THE AREA I LIVE IN, I ENJOY THE PEACE AND QUIET OF THE COUNTRY WITH ALL THE NATURAL WILD LIFE. WHERE ELSE CAN YOU LIVE AND SEE HERDS OF DEER, TURKEYS, HEAR OWLS, AND SEE HAWKS, AND I EVEN A WHITE RACCOON WHICH THE PARK RANGER ADVISED ME HAPPENS 1 IN EVERY 280,000 BIRTHS AND HE HAS BEEN AROUND FOR 3 YEARS NOW.

I MAY LIVE OUT IN THE COUNTRY BUT ITS CLOSE ENOUGH TO COMMUTE TO MY JOB IN THE CITY WHICH IS 45MIN TO AN HOUR A DAY EACH WAY.

Page 4

I DO NOT WANT THE BLIGHT OF A CELL TOWER BLOCKING MY BEAUTIFUL SUNSETS IN THE EVENING. AND BEG YOU TO RE THINK THE CELL PHONE TOWER IN MY AREA

THANK YOU FOR YOUR TIME.





2355 Industrial Park Blvd, Cumming, GA 30041

April 3, 2008  
Eric Garvin  
Global Tower Partners  
Project Manager-Site Development

RE: Results of Balloon Test  
Cricket - Global Towers Greenfield Site  
7040 Woodstock Cuba Rd  
Millington, TN

Dear Mr. Garvin:

Baran has completed a Balloon Test for the referenced property. The test was conducted by Mark Bailey and Valerie Allmond of Baran on April 3, 2008 at the site.

#### Test Parameters

A 5-foot diameter, helium filled, red weather balloon was used for the test. The balloon location was verified by handheld GPS coordinates onsite. The balloon was raised to a total height of 200 feet. The test was conducted between 10 am and 2 pm on April 3. Winds were out of the north at 0-10 miles per hour and the temperature was in the fifties. The skies were partly cloudy.

#### Photo-Simulations

A number of photographs were taken from nearby property owners of the balloon during the test. These photographs have been used in a series of photo-simulations which are attached to this document. Where appropriate the height of the simulated tower was adjusted higher to account for deflection of the balloon from the wind.

A map is included which depicts the location where each photo was taken.

If you have any questions regarding this test or the photo-simulations please call me at (404) 886-7366 or email me at [mbailey@barantelecom.com](mailto:mbailey@barantelecom.com).

Sincerely,

Baran Telecom, Inc.

A handwritten signature in cursive script that reads 'W. Mark Bailey'.

W. Mark Bailey, P.E.  
Environmental Manager

# Location Map of Photos - Balloon Test



EXHIBIT C-2  
LOCATION MAP FOR BALLOON TEST PHOTOS

2215 Independence Rd



**EXHIBIT D-1**  
**BALLOON TEST PHOTO #1 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map





**EXHIBIT D-2**  
**BALLOON TEST PHOTO #2 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map





**EXHIBIT D-3**  
**BALLOON TEST PHOTO #3 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map





**EXHIBIT D-4**  
**BALLOON TEST PHOTO #4 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map



2272 Independence Rd

5



**EXHIBIT D-5**  
**BALLOON TEST PHOTO #5 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map



Intersection of Independence + Woodstock Cuba



**EXHIBIT D-6**  
**BALLOON TEST PHOTO #6 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map



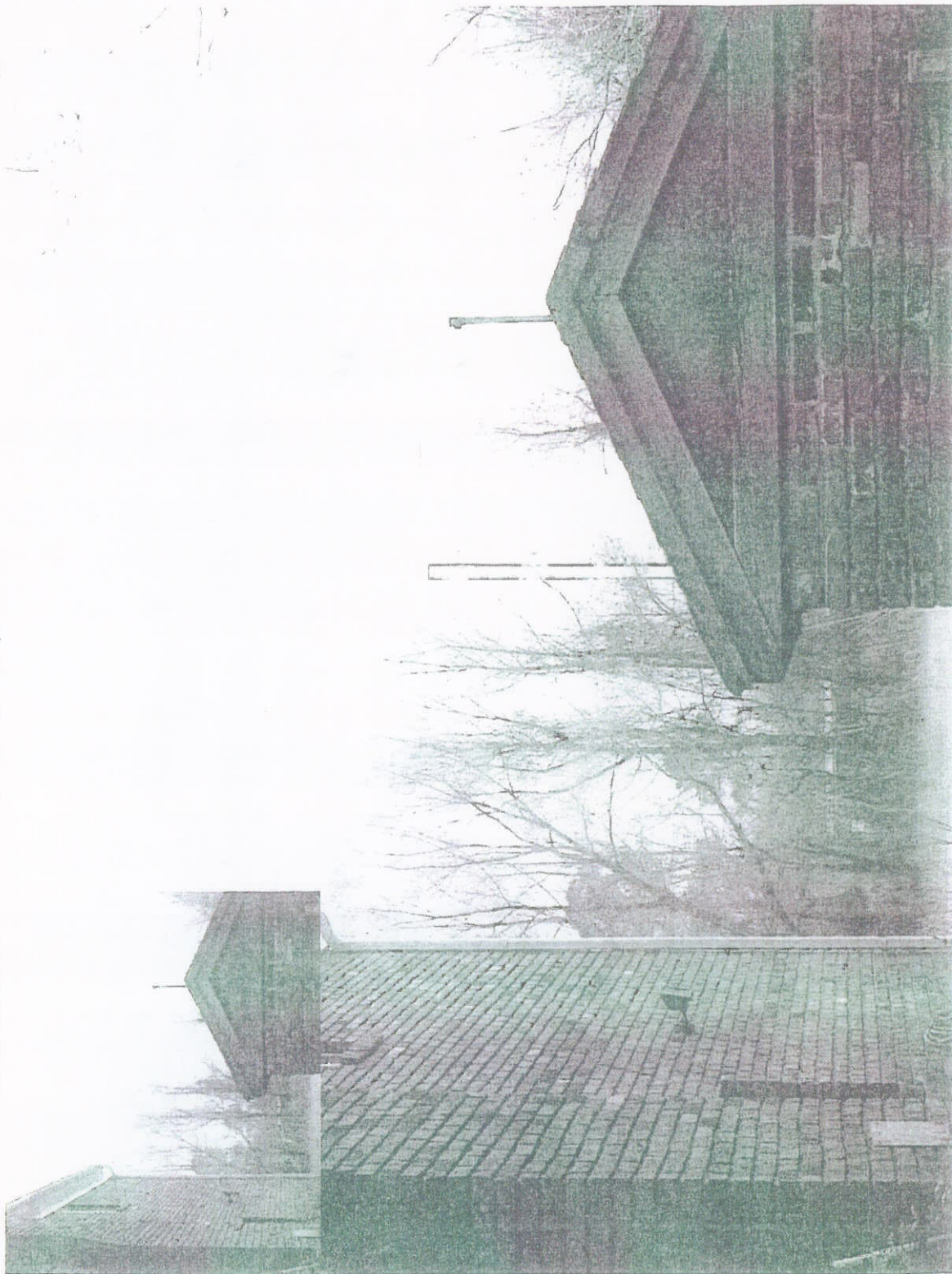


**EXHIBIT D-7**  
**BALLOON TEST PHOTO #7 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map

8

2272 Independence Rd

2nd location -



**EXHIBIT D-8**  
**BALLOON TEST PHOTO #8 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map



9

2nd location - 2272 Independence Rd



**EXHIBIT D-9**  
**BALLOON TEST PHOTO #9 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map



10

2nd location - 2272 Independence Rd



**EXHIBIT D-10**  
**BALLOON TEST PHOTO #10 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map



11

2nd location



**EXHIBIT D-11**  
**BALLOON TEST PHOTO #11 WITH SIMULATED TOWER VIEW**  
See Exhibit C-2 for Location Map

ITEM #: \_\_\_\_\_

PREPARED BY: Brian S. Bacchus

MOVED BY: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_

**A JOINT RESOLUTION PURSUANT TO SECTION 9 OF THE ZONING ORDINANCE-REGULATIONS OF THE COUNTY OF SHELBY AND THE CITY OF MEMPHIS, TENNESSEE, GRANTING A SPECIAL USE PERMIT FOR LAND LOCATED AT THE WEST SIDE OF COLLIERVILLE-ARLINGTON ROAD; +/-5,600 FEET SOUTH OF MACON ROAD KNOWN AS COLLIERVILLE FIRST BAPTIST CHURCH SPECIAL PERMIT, CASE NO. S. U. P. 08-205 CC**

**WHEREAS**, Section 9 of the Zoning Ordinance-Regulations of the City of Memphis and Shelby County, being a section of the Joint Ordinance-Resolution No. 3064 dated October 6, 1980, authorized the Shelby County Board of Commissioners and the Memphis City Council to grant a Special Use Permit for certain stated purposes subject to standards of general applicability and any additional standards applicable to Special Use Permits in the various zoning districts outside of but within five miles of the Memphis City limits; and

**WHEREAS**, Application has been made by **'Collierville First Baptist Church'** for a Special Use Permit with respect to the property located at the **'west side of Collierville-Arlington Road; +/- 5,600 feet south of Macon Road'** within the Agricultural(AG) District for the purpose of establishing **'recreational and sports field lighting'**; and

**WHEREAS**, The Office of Planning and Development has reviewed the application in accordance with the Special Use Permit provisions of the Zoning Ordinance-Regulations and reported its findings and recommendations to the Land Use Control Board; and

**WHEREAS**, A public hearing in relation thereto was held before the Memphis and Shelby County Land Use Control Board on **Thursday, April 10, 2008** and said board has studied and reported its recommendation to the Board of Commissioners and the City Council regarding the following potential effects of granting the Special Use Permit on:



- A. The character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public safety and general welfare;
- B. The compatibility of the existing buildings or uses within the immediate vicinity and the potential interference of said buildings or uses on the development or uses of adjacent property;
- C. The adequacy of public facilities including existing streets, parking, drainage, refuse disposal, fire protection, water and sewer or that such facilities will be provided;
- D. The destruction, loss or damage to features of significant natural, scenic or historic importance from the existing buildings or uses; and

**WHEREAS,** The Memphis and Shelby County Land Use Control Board and/or the Memphis and Shelby County Office of Planning and Development has recommended certain conditions be attached to the Special Use Permit to reduce any potential adverse impacts of the existing buildings or uses on the neighborhood, adjacent property owners, public facilities and significant natural, scenic or historic features; and

**WHEREAS,** The Memphis and Shelby County Land Use Control Board has also determined that the existing buildings or uses complies with all additional standards imposed on it by the particular provision of Section 9 authorizing such particular Special Use Permit.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE AND THE COUNCIL OF THE CITY OF MEMPHIS,** That a Special Use Permit is granted for *'recreational and sports field lighting'* at the *'west side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road'* in accordance with the site plan incorporated in the application, and subject to the attached conditions, all within the above mentioned Agricultural(AG) District.



**BE IT FURTHER RESOLVED**, That this Special Use Permit merely authorizes the filing of applications to acquire a Certificate of Use and Occupancy, or a Building Permit, and other required permits and approvals, provided that no such Certificate of Use and Occupancy shall be granted until all conditions imposed by the Board of Commissioners and the City Council have been met.

**BE IT FURTHER RESOLVED**, That this Resolution take effect from and after the date it shall have been passed by this Board of County Commissioners and by the Memphis City Council, and become effective as otherwise provided by law, and thereafter shall be treated as in full force and effect by virtue of the separate passage thereof by the Board of Commissioners of Shelby County, Tennessee, and the Council of the City of Memphis, the public welfare requiring same.

\_\_\_\_\_  
**A C Wharton, Jr., County Mayor**

**Date:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Clerk of the County Commission**

**ADOPTED:** \_\_\_\_\_

**S.U.P. 08-205 CC**  
**Collierville First Baptist Church Special Permit**

## **SITE PLAN CONDITIONS:**

A **Special Use Permit** is hereby authorized to **'Collierville First Baptist Church'** to allow **'recreational and sports field lighting'** on property located at the **'west side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road'** in accordance with an approved **'site plan'** and the following supplemental conditions:

### **I. Uses Permitted:**

- A. Recreational sports fields for three(3) ball fields and (3)three soccer fields, including an unlighted open play area associated with the future church facility.
- B. A concessions and maintenance building.
- C. Associated required parking and accessory structures for dugouts and associated facilities, including spectator and concession stands and bathroom facilities.
- D. Recreation sports field lighting, except within four-hundred twenty(420') feet of the west property line and 130 feet of the south property line.

### **II. Access, Circulation and Parking:**

- A. Dedicate forty-two(42') feet from the centerline of Collierville-Arlington Road.
- B. The location, design and number of any curb-cut shall be subject to review and approval by the City/County Engineer.
- C. All on-site parking spaces shall be provided, including required handicap parking and facilities in accordance with the Zoning Ordinance-Regulations and the Americans with Disabilities Act.
- D. The entrance shall have a security gate and the athletic fields shall be fenced with black or green vinyl coated fencing.

### **III. Landscaping and Signs:**

- A. A fifty(50') foot Landscape Buffer Plate 'N-1' (modified) shall be provided along the east and west property lines to supplement existing vegetation and shall be installed at the time of installation of the recreational fields and facilities.
- B. The existing mature trees and vegetation within the fifty(50') foot wide Landscape Buffer shall be preserved and maintained in a natural state along the east and west property lines and designated 'Undisturbed Natural Area', including the natural buffers along the south property line and along Collierville-Arlington Road.
- C. A detailed Site/Landscape Plan shall be submitted for review and approval prior to the forwarding of this application to the legislative bodies.

- D. One(1) detached sign a maximum of twelve(12) square feet in area shall be permitted for the recreational fields and facilities.

IV. Miscellaneous:

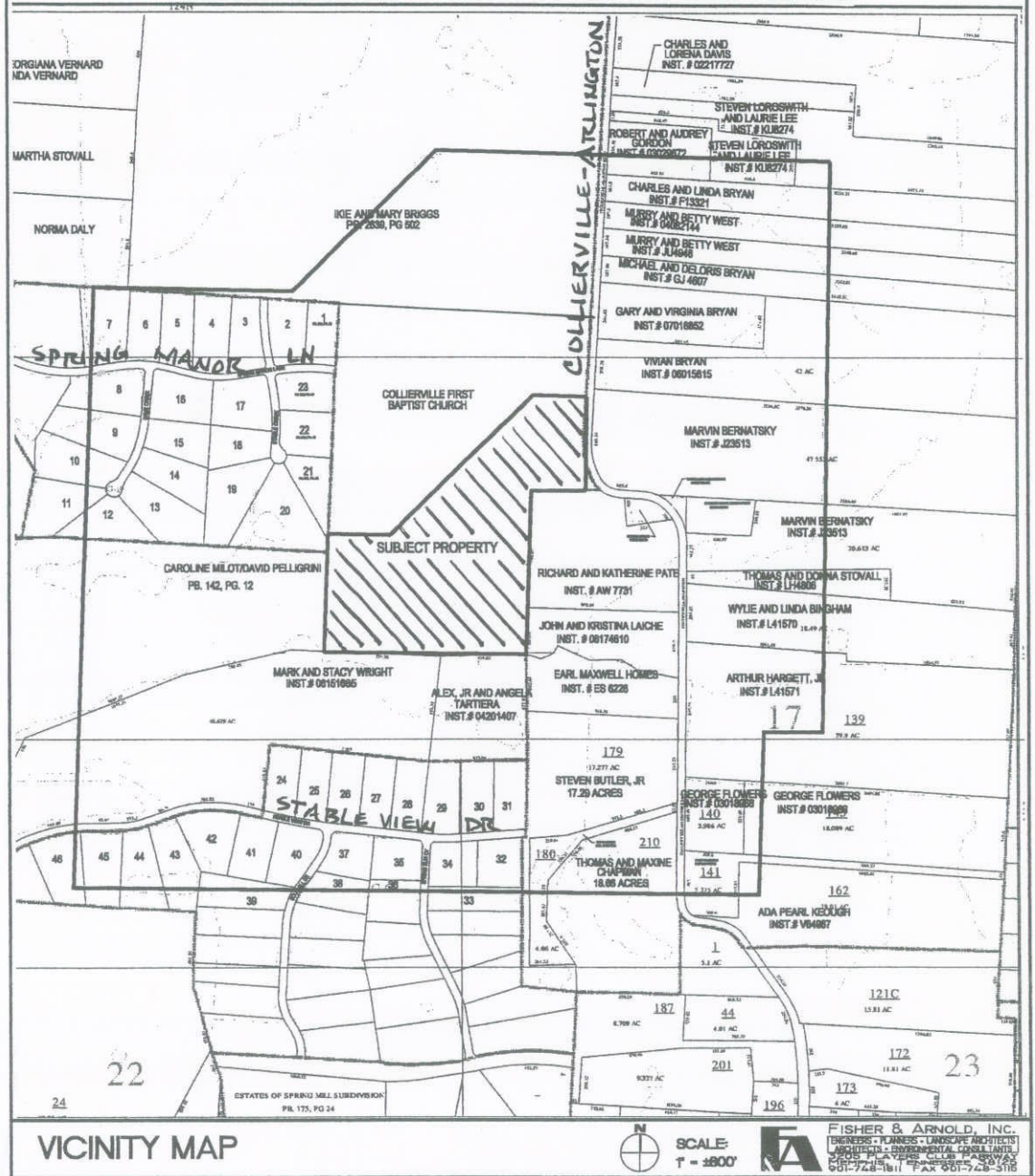
- A. The seasons for recreational sports shall start late March through Mid-July for baseball and soccer shall start Mid-August and runs through November.
  - B. The field usage shall be week nights, except for Wednesday and Saturday nights.
  - C. The hours of operation shall be from 5:00 P.M. to 10:00 P.M. weeknights and 9:00 A.M. to 5:00 P.M. on Saturdays.
  - D. All activities shall be for the use of church league play and not for major regional tournaments. All events shall be scheduled through the church ministry office. The recreational fields shall not be rented for non-church related activities.
  - E. All recreational sports field lighting shall be controlled manually by staff and a timer system shall be provided for shut-off at the required times.
  - F. A staff person shall be on-site during the hours of operation and shall be in attendance for all events.
  - G. No motorized off-road vehicles, except for maintenance vehicles shall be allowed on the premises.
  - H. No public address system shall be allowed.
  - I. The concession and restroom facilities' septic systems shall be approved in accordance with the Memphis & Shelby County Health Department.
  - J. The brand of the recreational field lighting shall be the Musco Light Structure Green System as submitted with the application.
- V. Recreational and sports field lighting shall be allowed for the above mentioned user and maintained in accordance with site plan conditions subject to administrative site plan review and approval and no zoning violations.

**S.U.P. 08-205 CC**

**Collierville First Baptist Church Special Permit**



# O.P.D. Case Number S.U.P. 08-205 CC



**LAND USE CONTROL BOARD RECOMMENDATION**

**CASE #: S.U.P. 08-205 CC**

At its regular meeting on **Thursday, April 10, 2008**, the Memphis and Shelby County Land Use Control Board held a public hearing on the application of **Collierville First Baptist Church**, requesting a Special Use Permit on the property described as follows:

**LOCATION:** West side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road

**APPLICANTS:** Collierville First Baptist Church

**PROPERTY SIZE:** 35.27 Acres

**EXISTING ZONING:** Agricultural(AG) District

**REQUEST:** Special use permit to allow recreational and sports field lighting

**The following spoke in support of the application:**

**Jud TePaske**, representative; stated agreement with the recommendation of staff and conditions for approval.

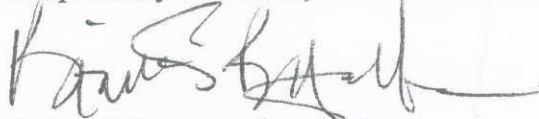
**No one spoke in opposition of the application.**

The Land Use Control Board viewed the application for **Collierville First Baptist Church**, requesting a Special Use Permit and the report of the staff. A motion was made and seconded to recommend approval of the application with conditions.

**The motion passed by unanimous vote of 9 to 0.**

The Board approved the conclusions of the staff as contained in the staff report.

Respectfully submitted,



**Brian S. Bacchus**, Principal

Mary L. Baker, Deputy Director  
Office of Planning and Development

**Cc:** **Committee Members**  
**File**



## **SITE PLAN CONDITIONS:**

A *Special Use Permit* is hereby authorized to '*Collierville First Baptist Church*' to allow '*recreational and sports field lighting*' on property located at the '*west side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road*' in accordance with an approved '*site plan*' and the following supplemental conditions:

### **I. Uses Permitted:**

- A. Recreational sports fields for three(3) ball fields and (3)three soccer fields, including an unlighted open play area associated with the future church facility.
- B. A concessions and maintenance building.
- C. Associated required parking and accessory structures for dugouts and associated facilities, including spectator and concession stands and bathroom facilities.
- D. Recreation sports field lighting, except within four-hundred twenty(420') feet of the west property line and 130 feet of the south property line.

### **II. Access, Circulation and Parking:**

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- C. All on-site parking spaces shall be provided, including required handicap parking and facilities in accordance with the Zoning Ordinance-Regulations and the Americans with Disabilities Act.
- D. The entrance shall have a security gate and the athletic fields shall be fenced with black or green vinyl coated fencing.

### **III. Landscaping and Signs:**

- A. A fifty(50') foot Landscape Buffer Plate 'N-1' (modified) shall be provided along the east and west property lines to supplement existing vegetation and shall be installed at the time of installation of the recreational fields and facilities.
- B. The existing mature trees and vegetation within the fifty(50') foot wide Landscape Buffer shall be preserved and maintained in a natural state along the east and west property lines and designated 'Undisturbed Natural Area', including the natural buffers along the south property line and along Collierville-Arlington Road.
- C. A detailed Site/Landscape Plan shall be submitted for review and approval prior to the forwarding of this application to the legislative bodies.



- D. One(1) detached sign a maximum of twelve(12) square feet in area shall be permitted for the recreational fields and facilities.

#### IV. Miscellaneous:

- A. The seasons for recreational sports shall start late March through Mid-July for baseball and soccer shall start Mid-August and runs through November.
  - B. The field usage shall be week nights, except for Wednesday and Saturday nights.
  - C. The hours of operation shall be from 5:00 P.M. to 10:00 P.M. weeknights and 9:00 A.M. to 5:00 P.M. on Saturdays.
  - D. All activities shall be for the use of church league play and not for major regional tournaments. All events shall be scheduled through the church ministry office. The recreational fields shall not be rented for non-church related activities.
  - E. All recreational sports field lighting shall be controlled manually by staff and a timer system shall be provided for shut-off at the required times.
  - F. A staff person shall be on-site during the hours of operation and shall be in attendance for all events.
  - G. No motorized off-road vehicles, except for maintenance vehicles shall be allowed on the premises.
  - H. No public address system shall be allowed.
  - I. The concession and restroom facilities' septic systems shall be approved in accordance with the Memphis & Shelby County Health Department.
  - J. The brand of the recreational field lighting shall be the Musco Light Structure Green System as submitted with the application.
- V. Recreational and sports field lighting shall be allowed for the above mentioned user and maintained in accordance with site plan conditions subject to administrative site plan review and approval and no zoning violations.

**S.U.P. 08-205 CC**

**Collierville First Baptist Church Special Permit**

**GRATUITY DISCLOSURE FORM****Shelby County Ethics Commission**

*INSTRUCTIONS: This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.*

1. NAME

NONE

2. DATE OF GRATUITY

N/A

3. NATURE AND PURPOSE OF THE GRATUITY

N/A

4. NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY

N/A

5. NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY

N/A

6. ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY

N/A

7. DESCRIPTION OF THE GRATUITY

N/A

8. COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)

N/A

9. The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.

Samuel W. Nichols  
Signature

12/27/07  
Date

SAMUEL W. NICHOLS  
Print Name

*A copy of your completed form will be placed on the Shelby County Internet website.*

**From:** Jackie Distretti [ibj56@comcast.net]  
**Sent:** Saturday, February 02, 2008 12:27 PM  
**To:** Bacchus, Brian  
**Subject:** Case number SUP 08-205 CC

Hello, I am opposed to granting a permit to allow recreational and sports field lighting at this location. I live directly behind this property and DO NOT want field lighting in my back yard. It will definitely decrease the value of my property and impact my enjoyment of my back yard which I have invested many dollars and hours of labor to make into a wonderful garden. I am opposed to the increased amount of traffic this will also bring to the neighborhood. This is rural and residential. I moved to the country for a reason. It wasn't to be next door to a ball park. I vote NO!!!

Jackie Distretti, 586 Stable Creek Lane, Eads, Tn 38028  
901-270-0077



**From:** Murry Nevil West [murrywest@comcast.net]

**Sent:** Saturday, February 02, 2008 5:22 PM

**To:** Bacchus, Brian

**Subject:** Special Land Use Permit...S.U.P. 08-205 cc.....73.55 acres

The request for 73.55 acres of field lighting is too much. With that much lighting the skies would be lit for miles. No one would want that much light, noise, and traffic near their home. If this request is granted, PLEASE restrict field lighting on tall poles to the south end of the property, along the creek and no more than 20 acres. We are also in the Gray's Creek Preserve.

Thanks for considering this request,  
Murry & Betty West  
740N Collierville Arlington Rd.

**Sent:** Monday, February 04, 2008 7:28 PM  
**To:** info@grayscreek.org  
**Subject:** Spring Mill Farms

GC:

Please see the attached. Our association is adamantly opposed to Collierville Baptist Church being allowed recreational and sports field **lighting** adjacent to our neighborhood.

We request your help in this matter. Please call me at your earliest convenience.

**Ronald W. Kim**  
 Attorney at Law  
 Kim & Associates  
*An Association of Attorneys*  
 241 Germantown Bend Cove  
 Cordova, Tennessee 38018  
 (901) 767-3520  
 (901) 755-3450 fax  
 1-877-859-3943 Toll Free  
 rwkimlaw@aol.com  
 www.ronkimlaw.com

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\*\*\*\*\*IRS Circular 230

Notice:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Confidentiality Notice:

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Who's never won? Biggest Grammy Award surprises of all time on AOL Music.



**From:** Greg Hall [greg\_hall\_2003@yahoo.com]

**Sent:** Tuesday, February 05, 2008 10:27 PM

**To:** Bacchus, Brian

**Subject:** SUP 08-205 CC

I am inquiring about the public hearing dated Feb. 14, 2008 regarding the special use permit for lighting. As I understand this is to allow for special use for lighting only.

As the property owner at 550 N. Collierville-Arlington Rd., across the street from the lighted fields, I am opposed to any special use which delineates from it's current allowed use. This is a residential area with very similar use to the one proposed. Please enter these comments into the public record.

Regards

Gregory J Hall

550 N. Collierville-Arlington Rd.

Fisherville, TN 38017

(901) 825-0054

(901) 861-1451

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February 5, 2008

Mary Baker, Deputy Director  
Memphis and Shelby County Land Use Control Board  
125 North Main Street, Room 476  
Memphis, TN 38103

Re: S.U.P. 08-205 CC

Dear Ms. Baker:

Yesterday, we received the Notice of Public Hearing regarding the above noted case which is located on the West side of Collierville-Arlington Road, approximately one mile south of Macon Road. It is my understanding that Collierville First Baptist Church is seeking to change the existing zoning to allow this property to be used for recreational activities including field lighting. This property is just across from our home at 544 and 546 N. Collierville-Arlington Road.

Unfortunately, we will be out of town on business on Thursday, February 14, 2008 when the public hearing is to be held. Therefore, I want to write and let you know that I am opposed to the rezoning of this property for the following reasons:

1. Recently a project to put a motorcycle track on Monterey Road was fortunately stopped. This project would have affected far fewer people than the one that is proposed, and was not going to require sports lighting.
2. There are already significant traffic concerns in this area and there is a wreck at least once a month in the curve where this property is located.
3. The placement of a sports and recreation center is not consistent with the surrounding property uses which are entirely residential and agricultural. This property would be used for neither.
4. This project would adversely affect property values in the near-by area because of the increased traffic, noise and environmental disruption caused by the lighting, etc.

We would suggest that if the church wants to put up a recreational sports park that they either utilize their current property, purchase property that is near their church, or put it in a neighborhood that is adjacent to their church. We have not interest in their being allowed to disrupt our property or agricultural environment with their lighted sports park.

Sincerely,

Thomas G. Stovall, MD

Donna S. Stovall

Cc: Memphis and Shelby County Office of Planning and Development  
125 North Main Street-Suite 468  
Memphis, Tennessee 38103

From: George Moore [gwmooore@fedex.com]  
Sent: Friday, February 08, 2008 10:06 AM  
To: Bacchus, Brian  
Subject: RE; S.U.P 08-205CC

Dear Mr. Bacchus,

In reference to the Public Hearing to the Memphis and Shelby County Land Use Control Board for a Special Use Permit for the Collierville Baptist Church (Thursday, February 14, 2008), I will not be able to attend.

I would however like it to be made known I "OPPOSE" this permit. My house and property is the closest residence adjacent to this property located at 545 North Collierville Arlington Road.

1. There are already significant traffic concerns in this area and serious multiple accidents in the curve in front of my house and adjacent to where this property is located.
2. The placement of a sports and recreation center is not consistent with the surrounding property uses which are entirely residential and agricultural. This property would be used for neither.
3. This project would adversely affect the property values in the near-by area because of the increase in traffic, noise, and environmental disruption caused by lighting, etc.
4. According to the Tax assessors office this property was purchased by Collierville First Baptist Church 11/28/2006 for \$1,434,255.00, fully knowing what they planned to use it for, and knowingly disregarded all adjacent home and property owners best interest.

We suggest if the church wants to put up a recreational sports park that they either utilize their current property, purchase property that is near their church, or put it in a neighborhood that is adjacent to their church. We have no interest in their being allowed to disrupt our property or agricultural environment with their lighted sports park.

I will however consider immediately selling my house and property to Collierville Baptist Church or anyone else "as-is" for a fair market value and rescind my opposition to their land use permit, once a transaction has been fully completed.

George Moore  
Mailing Address  
P. O. Box 651  
Collierville, TN 38027-0651

Home Address  
545 North Collierville-Arlington Road  
Collierville, TN 38017



**From:** Alex Tartera [atartera@sparkscorp.com]  
**Sent:** Thursday, February 14, 2008 9:57 AM  
**To:** Bacchus, Brian  
**Cc:** Alex Tartera  
**Subject:** Case Number: S.U.P. 08-205 CC

**Importance:** High

Brian, due to a scheduling conflict, I will not be able to attend the Public Hearing for Case Number: S.U.P. 08-205 CC today at 1pm.

**I am writing this email to communicate my opposition for this permit.**

Being a connected neighbor (Alex & Angela Tartera Inst# 04201407), I feel the negative impact it will have on the surrounding areas will significantly decrease the property value and deter any additional development. This area is on a up rise for building permits and development, we do not need this negative development.

If Collierville First Baptist Church wants to build this facility, they should build it in Collierville. The reason they are trying this location is because Collierville's lighting restrictions will not allow this in the city limits of Collierville.

**Alex Tartera**  
atartera@sparkscorp.com  
901.766.4434  
www.sparkscorp.com

**From:** Steve Rich [steve@sparksentp.com]  
**Sent:** Wednesday, February 20, 2008 1:31 PM  
**To:** brian.bacchus@memphisistn.gov  
**Cc:** srich@richco.com; Ginger Rich  
**Subject:** S.U.P. 08-205 CC

To whom it may concern:

Subject: S.U.P. 08-205 CC

1. I understand the public hearing for this case was postponed from Feb 14, 2008. **What is the new date?**
2. We would like to go on record as being opposed to this re-zoning request.
3. We reside on 8 acres in the Estates of Spring Mill – the subject property adjoins our neighborhood.
4. We perceive a major safety issue with Collierville Arlington Rd, this road is already heavily traveled and the proposed property is located in a bad curve of that road.
5. The surrounding area is agricultural and residential. Presently, numerous neighbors to this parcel including us, own horses and specifically purchased their property because of the agricultural zoning. Horses and sports lighted facilities are neither compatible nor consistent with anything in the general area.
6. The projected use and the sports lighting in addition to disrupting the environment (noise, visually and increased traffic), will also in my belief negatively impact the value of our property.
7. Certainly, a more suitable parcel of land is available to the church on which to conduct its activities.

Simply stated, we do not want a "Mike Rose type sports soccer facility" in an area zoned agricultural.

Thank you for permitting us to express our opinion.

**Steve and Ginger Rich**  
**280 Spring Run Lane**  
**Eads, TN 38028**  
**Phone: 901.854.1300**  
**srich@richco.com**

**From:** Greg Hall [greg\_hall\_2003@yahoo.com]

**Sent:** Wednesday, March 12, 2008 9:24 PM

**To:** Bacchus, Brian

**Subject:** RE: S.U.P. 08-205 CC

Is there a hearing on March 13. If so, I have not received a notice.

If there is one, I would like to go on record, again, as adamantly opposing this special use permit. As the house directly across N. Collierville-Arlington Rd. I am opposed to the use of land in the Gray's Creek area for any purpose other than agricultural or residential.

Collierville-Arlington Rd. is a two-lane road and is to stay that way. This lighting of fields will perpetuate traffic patterns for which Collierville-Arlington Rd. is not equipped for. This is one of the last remaining rural areas of Shelby County. Allowing for use of property will lead to the erosion of this bucolic setting which will erode our property values. We are opposed to any use other than residential or agricultural.

Regards

Gregory J Hall

550 N Collierville-Arlington Rd.

Fisherville, TN

901 825-0054

**Brian.Bacchus@memphistn.gov** wrote:

Hello Steve & Ginger Rich & Everyone,

Thank you for inquiring and being involved in the planning process. Be advised, the Land Use Control Board on Feb. 14, 2008 held this case until its next regularly scheduled meeting on Thursday, March 13, 2008. You will receive Notice of Public Hearing if the applicant decides to move forward with this application for special permit. Attached is a copy of the February 14, 2008-Staff Report for your review, including City/County Engineer comments. Questions, pls cl or e-mail me. Thanking you again for being involved in the planning process. Sincerely,

*Brian S. Bacchus, Principal Planner*

*Land Use Control*

*Office of Planning & Development*

*125 N. Main Street-Suite 468*

*Memphis, TN 38103*

*Ph: (901)576-7120*

*Fax: (901)576-7194*

**brian.bacchus@memphistn.gov**

**From:** Steve Rich [mailto:steve@sparksentp.com]

**Sent:** Wednesday, February 20, 2008 1:31 PM

**To:** brian.bacchus@memphisistn.gov

**Cc:** srich@richco.com; Ginger Rich

**Subject:** S.U.P. 08-205 CC

To whom it may concern:

Subject: S.U.P. 08-205 CC

1. I understand the public hearing for this case was postponed from Feb 14, 2008. **What is the new date?**
2. We would like to go on record as being opposed to this re-zoning request.
3. We reside on 8 acres in the Estates of Spring Mill – the subject property adjoins our neighborhood.



4. We perceive a major safety issue with Collierville Arlington Rd, this road is already heavily traveled and the proposed property is located in a bad curve of that road.
5. The surrounding area is agricultural and residential. Presently, numerous neighbors to this parcel including us, own horses and specifically purchased their property because of the agricultural zoning. Horses and sports lighted facilities are neither compatible nor consistent with anything in the general area.
6. The projected use and the sports lighting in addition to disrupting the environment (noise, visually and increased traffic), will also in my belief negatively impact the value of our property.
7. Certainly, a more suitable parcel of land is available to the church on which to conduct its activities.

Simply stated, we do not want a "Mike Rose type sports soccer facility" in an area zoned agricultural.

Thank you for permitting us to express our opinion.

**Steve and Ginger Rich**  
**280 Spring Run Lane**  
**Eads, TN 38028**  
**Phone: 901.854.1300**  
**srich@srichco.com**

---

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**From:** dwade@martintate.com

**Sent:** Wednesday, April 02, 2008 10:07 AM

**To:** Baker, Mary; amciinc@bellsouth.net

**Cc:** "RWKIMLAW@aol.com" @tun.com; clooney@lrk.com; clooney@lrk.com; dougd@boyle.com; Bacchus, Brian

**Subject:** RE: Help Please FW: Spring Mill Farms

Mary – Thanks for the request. Certain board members of the Gray's Creek Association met twice with the representatives of the applicant and reviewed the plan. At the request of the Association, the Church amended the plan by increasing planting, moving the lighted fields away from residences and agreeing to certain timing restrictions. Ron Kim, on behalf of the directly affected neighbors, also attended the meetings. Based on the revisions undertaken by the applicant, the Gray's Creek Association is now supporting the application. Ron will need to address whether the changes by the applicant have satisfied his clients. If you need more regarding the position of the Association, please let me know. As always, we appreciate the attention your office devotes to this important area of Shelby County.

David.

**From:** Mary.Baker@memphistn.gov [mailto:Mary.Baker@memphistn.gov]

**Sent:** Wednesday, April 02, 2008 9:22 AM

**To:** amciinc@bellsouth.net

**Cc:** "RWKIMLAW@aol.com" @tun.com; clooney@lrk.com; clooney@lrk.com; dougd@boyle.com; David Wade; Brian.Bacchus@memphistn.gov

**Subject:** RE: Help Please FW: Spring Mill Farms

David and other Grays Creek Board members,

Right now OPD does not have a position from the Gray's Creek Association on this application. It is scheduled to be considered by the Land Use Control Board on April 10, 2008. Please respond whether you have a position regarding this application. MaryB

**From:** David Sanders [mailto:amciinc@bellsouth.net]

**Sent:** Monday, February 04, 2008 8:59 PM

**To:** Baker, Mary

**Cc:** "RWKIMLAW@aol.com" @tun.com; 'Carson Looney'; 'Carson Looney'; 'Doug Dickens'; dwade@martintate.com

**Subject:** Help Please FW: Spring Mill Farms

Mary,

I just received this email – below – along with the attachment regarding a special use permit for athletic field lighting. The Gray's Creek Association was not notified and apparently very few residents were notified also. The attached document is only the first page of the staf report and this one page is apparently the only page received by the residents who DID receive notice.

The Gray's Creek Association respectfully requests a thirty day hold on this matter to allow the affected parties time to study and properly respond.

Thank you,

David Sanders  
Gray's Creek Association

**From:** RWKIMLAW@aol.com [mailto:RWKIMLAW@aol.com]

**From:** David Baker [dbaker@fisherarnold.com]  
**Sent:** Monday, April 07, 2008 8:38 AM  
**To:** Bacchus, Brian  
**Subject:** FW: First Baptist

Brian

Here is some information for your file. It is from the Spring Manor Subdivision listing their support . Please let me know if you have any questions.

thanks

David

---

**From:** RWKIMLAW@aol.com [mailto:RWKIMLAW@aol.com]  
**Sent:** Friday, April 04, 2008 12:54 PM  
**To:** dbaker@fisherarnold.com  
**Cc:** greg.basye@respironics.com; ibj56@comcast.net; jhguasco@comcast.net; RCKADVANCED@aol.com; amciinc@bellsouth.net  
**Subject:** Re: First Baptist

Dear David:

This is to confirm with you that SMF HOA does not oppose your plans with respect to the athletic fields based upon the conditions which you propose and the attached map illustrations.

Also, I trust you will contact those not in our subdivision on Collierville-Arlington that may have an interest in this matter.

We appreciate your effort in this matter and the effort of all those involved in the Church. In addition, we thank Grey's Creek for their involvement, input and recommendations.

By way of this email I am attaching your final documents so that Grey's Creek will know where we all stand.

Yery Truly Yours,

Ronald Kim,  
President, SMF HOA

*Ronald W. Kim*  
**Attorney at Law**  
KIM & ASSOCIATES  
An Association of Attorneys  
241 Germantown Bend Cove  
Cordova, Tennessee 38018  
(901) 767-3520  
(901) 755-3450 fax  
1-877-859-3943 Toll Free  
rwkimlaw@aol.com  
www.ronkimlaw.com  
Also Licensed in Alabama and Florida

\*\*\*\*\*  
IRS Circular 230 Notice:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained

file://N:\Land\_Use\SPECIAL USE PERMITS\2008\08-205cc Collierville-Arlington Road\... 6/18/2008



in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Confidentiality Notice:

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## **ZONING RESOLUTION**

**WHEREAS**, Sections 9 of the Zoning Ordinance-Regulations of the City of Memphis and Shelby County, being a section of the Joint Ordinance-Resolution No. 3064 dated October 6, 1980, authorized the Shelby County Board of Commissioners and the Memphis City Council to grant a Special Use Permit for certain stated purposes subject to standards of general applicability and any additional standards applicable to specific variations in the various zoning districts outside of but within five miles of the Memphis City limits; and

**WHEREAS**, Application has been made by *'Collierville First Baptist Church'* for a Special Use Permit with respect to the property located at the *'west side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road'* within the Agricultural(AG) District for the purpose of establishing an *'recreational and sports field lighting'*; and

**WHEREAS**, The Office of Planning and Development has reviewed the application in accordance with the Special Use Permit provisions of the Zoning Ordinance-Regulations and reported its findings and recommendations to the Land Use Control Board; and

**WHEREAS**, A public hearing in relation thereto was held before the Memphis and Shelby County Land Use Control Board on *Thursday, April 10, 2008* and said board has studied and reported its recommendation to the Board of Commissioners and the City Council regarding the following potential effects of granting the Special Use Permit on:

- A. The character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public safety and general welfare;
- B. The compatibility of the proposed building or use with the immediate vicinity and the potential interference of said building or use on the development or use of adjacent property;
- C. The adequacy of public facilities including existing streets, parking, drainage, refuse disposal, fire protection, water and sewer or that such facilities will be provided;
- D. The destruction, loss or damage to features of significant natural, scenic or historic importance from the proposed building or use; and

**WHEREAS**, The Memphis and Shelby County Land Use Control Board and/or the Memphis and Shelby County Office of Planning and Development has recommended certain conditions be attached to the Special Use Permit to reduce any potential adverse impacts of the existing buildings or uses on the neighborhood, adjacent property owners, public facilities and significant natural, scenic or historic features; and

**WHEREAS**, The Memphis and Shelby County Land Use Control Board has also determined that the existing buildings or uses complies with all additional standards imposed on it by the particular provision of Section 9 authorizing such particular Special Use Permit.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE AND THE COUNCIL OF THE CITY OF MEMPHIS,** That a Special Use Permit is granted for '*recreational and sports field lighting*' in accordance with the site plan incorporated in the application, and subject to the attached conditions, all within the above mentioned Agricultural (AG) District.

**BE IT FURTHER RESOLVED,** That this Special Use Permit merely authorizes the filing of applications to acquire a Certificate of Use and Occupancy, or a Building Permit, and other required permits and approvals, provided that no such Certificate of Use and Occupancy shall be granted until all conditions imposed by the Board of Commissioners and the City Council have been met.

**BE IT FURTHER RESOLVED,** That this Resolution take effect from and after the date it shall have been passed by this Board of County Commissioners and by the Memphis City Council, and become effective as otherwise provided by law, and thereafter shall be treated as in full force and effect by virtue of the separate passage thereof by the Board of Commissioners of Shelby County, Tennessee, and the Council of the City of Memphis, the public welfare requiring same.

**ATTEST:**

cc: *Office of Construction Code Enforcement*  
*City Public works (Admin)*  
*Office of Planning and Development*  
*Shelby County Assessor*

*S.U.P. 08-205 CC*  
*Collierville First Baptist Church Special Permit*



## **SITE PLAN CONDITIONS:**

A *Special Use Permit* is hereby authorized to '*Collierville First Baptist Church*' to allow '*recreational and sports field lighting*' on property located at the '*west side of Collierville-Arlington Road; +/-5,600 feet south of Macon Road*' in accordance with an approved '*site plan*' and the following supplemental conditions:

### **I. Uses Permitted:**

- A. Recreational sports fields for three(3) ball fields and (3)three soccer fields, including an unlighted open play area associated with the future church facility.
- B. A concessions and maintenance building.
- C. Associated required parking and accessory structures for dugouts and associated facilities, including spectator and concession stands and bathroom facilities.
- D. Recreation sports field lighting, except within four-hundred twenty(420') feet of the west property line and 130 feet of the south property line.

### **II. Access, Circulation and Parking:**

- A. Dedicate forty-two(42') feet from the centerline of Collierville-Arlington Road.
- B. The location, design and number of any curb-cut shall be subject to review and approval by the City/County Engineer.
- C. All on-site parking spaces shall be provided, including required handicap parking and facilities in accordance with the Zoning Ordinance-Regulations and the Americans with Disabilities Act.
- D. The entrance shall have a security gate and the athletic fields shall be fenced with black or green vinyl coated fencing.

### **III. Landscaping and Signs:**

- A. A fifty(50') foot Landscape Buffer Plate 'N-1' (modified) shall be provided along the east and west property lines to supplement existing vegetation and shall be installed at the time of installation of the recreational fields and facilities.
- B. The existing mature trees and vegetation within the fifty(50') foot wide Landscape Buffer shall be preserved and maintained in a natural state along the east and west property lines and designated 'Undisturbed Natural Area', including the natural buffers along the south property line and along Collierville-Arlington Road.
- C. A detailed Site/Landscape Plan shall be submitted for review and approval prior to the forwarding of this application to the legislative bodies.

- D. One(1) detached sign a maximum of twelve(12) square feet in area shall be permitted for the recreational fields and facilities.

#### IV. Miscellaneous:

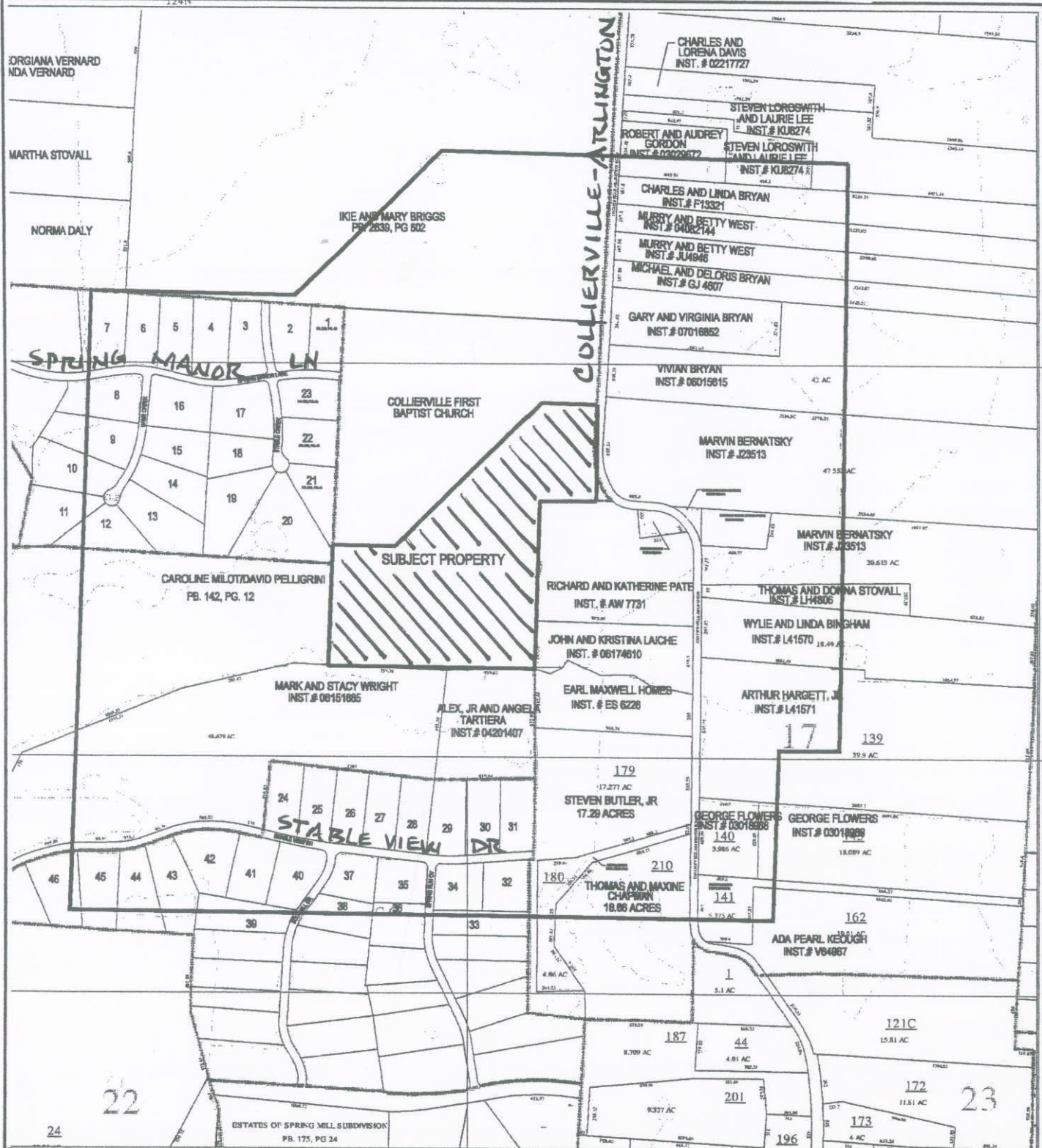
- A. The seasons for recreational sports shall start late March through Mid-July for baseball and soccer shall start Mid-August and runs through November.
  - B. The field usage shall be week nights, except for Wednesday and Saturday nights.
  - C. The hours of operation shall be from 5:00 P.M. to 10:00 P.M. weeknights and 9:00 A.M. to 5:00 P.M. on Saturdays.
  - D. All activities shall be for the use of church league play and not for major regional tournaments. All events shall be scheduled through the church ministry office. The recreational fields shall not be rented for non-church related activities.
  - E. All recreational sports field lighting shall be controlled manually by staff and a timer system shall be provided for shut-off at the required times.
  - F. A staff person shall be on-site during the hours of operation and shall be in attendance for all events.
  - G. No motorized off-road vehicles, except for maintenance vehicles shall be allowed on the premises.
  - H. No public address system shall be allowed.
  - I. The concession and restroom facilities' septic systems shall be approved in accordance with the Memphis & Shelby County Health Department.
  - J. The brand of the recreational field lighting shall be the Musco Light Structure Green System as submitted with the application.
- V. Recreational and sports field lighting shall be allowed for the above mentioned user and maintained in accordance with site plan conditions subject to administrative site plan review and approval and no zoning violations.

**S.U.P. 08-205 CC**

**Collierville First Baptist Church Special Permit**



# O.P.D. Case Number S.U.P. 08-205 CC



Item # \_\_\_\_\_

Prepared by: Michael Oakes  
Engineering

Approved by: \_\_\_\_\_  
County Attorney

**A RESOLUTION APPROVING AN AGREEMENT WITH THE TOWN OF COLLIERVILLE TO TREAT THE WASTEWATER FROM THE COTTON CREEK AREA. SPONSORED BY COMMISSIONER WYATT BUNKER.**

---

**WHEREAS**, Some one hundred and two (102) lots are located in the area known as Cotton Creek which includes the subdivisions of Kirkland Estates, Cotton Creek and Fox Hollow Farms (Phases I and II); and

**WHEREAS**, The residents of this area have experienced problems with the septic tanks due primarily to inadequate soil percolation rates; and

**WHEREAS**, The result of these problems represents a health hazard to the neighborhood and downstream water; and

**WHEREAS**, It has been determined that a Low Pressure Sewer System (LPSS) is the most cost effective manner to collect and transport the wastewater from the lots; and

**WHEREAS**, The Town of Collierville has agreed in principle to treat the Cotton Creek area wastewater at the Shelton Road Treatment Plant; and

**WHEREAS**, The operation and maintenance of the LPSS will be responsible of the Town of Collierville and the system users; and

**WHEREAS**, The residents of the Cotton Creek area being served by the LPSS shall be required to connect to the sewer system per Shelby County Ordinance 28-104, plumbing facilities required; and

**WHEREAS**, The system users will be responsible for the connection fees and treatment fees established by the Town of Collierville; and

**WHEREAS**, The agreement with the Town of Collierville shall not be effective until the Collierville Board of Mayor and Alderman have voted for approval; and

**WHEREAS**, The Stanford Group in their capacity as operator of the Spring Creek Ranch Country Club has agreed to allow their water to be transported to the Treatment Plant by connection to a Lift (pump) Station owned and operated by the Town of Collierville to which Stanford Group holds capacity rights and obligations; and

**WHEREAS**, AFRAM has been retained to study the problems, recommend corrections and prepare construction documents for system installation; and

**WHEREAS**, An amendment to the contract with AFRAM to provide for design of the LPSS is being submitted as a companion item to this resolution; and

**WHEREAS**, Approval of the amendment to the contract with AFRAM is dependent on approval of the agreement with the Town of Collierville.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That the Mayor be authorized to sign the Agreement with the Town of Collierville providing for treatment of wastewater from the Cotton Creek area and that such agreement must be in effect prior to signing a contract with AFRAM for the design of plans for the new system.

\_\_\_\_\_  
A C Wharton, Jr., Mayor

Date:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED \_\_\_\_\_

**SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET**

Referred to Commission Committee Public Works

For Commission Action on \_\_\_\_\_

DESCRIPTION OF ITEM:

**A RESOLUTION APPROVING AN AGREEMENT WITH THE TOWN OF  
COLLIERVILLE TO TREAT THE WASTEWATER FROM THE COTTON CREEK  
AREA. SPONSORED BY COMMISSIONER WYATT BUNKER.**

**CHECK ALL THAT APPLY BELOW:**

  X   This Action does NOT require expenditure of funds.

       This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_; County CIP Funds: \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** Engineering  
**APPROVAL:**

Dept. Head: Michael E. Oakes, P.E. – (901) 545-4332 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Elected Official: Commissioner Wyatt Bunker - (901) 545-4301 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Division Director: Ted Fox - (901) 545-4565 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: Jim Huntzicker – (901) 545-4514 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Finance Dept. Mike Swift – (901) 545-4449 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

County Attorney: Pam Skelton (901) 545-4362 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: Jim Huntzicker – (901) 545-4514 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)



## SUMMARY SHEET

### **I. Description of Item**

Resolution approving an agreement with the Town of Collierville to treat the wastewater from the Cotton Creek area.

### **II. Source and Amount of Funding**

A. Amount Expended/Budget Line Item

**No County funds required**

### **III. Contract Items**

- A. Type of Contract
- B. Terms

### **IV. Additional Information Relevant to Approval of This Item**

Over a period of about two decades, developments were approved in these subdivisions upon review by County Health Department officials using only U.S. Soil Conservation Service soils maps. The area is also in the Wolf River floodplain and is, thus, very flat and poorly drained. Over the years, many residents have reported problems with water from the septic tanks standing on their lots. This water should soak (percolate) into the ground but the amount of clays in these local soils make this impossible at an adequate rate. Responsibility for developing in floodplains and determining adequacy of soils for use in support of septic tanks rests with the developer, individual home builder and owner in accordance with State and County Regulations. However, since this problem could eventually result in health problems by pollution of downstream waters, a systemic solution is considered to be in the County's best interest.

AFRAM, Inc. has been retained and has performed a study which confirmed that the soils comprising most of the lots of these subdivisions are unable to percolate properly. Alternatives were considered and the installation of a Low Pressure Sewer System (LPSS) is considered to provide the most efficient solution at the best cost. This system collects the water from the septic tanks by gravity flow, when possible, and uses small pumps at each tank when gravity flow will not work. This "grey" water is then pumped to a large sewer pump (lift station) where it is pumped along a pressure sewer line (force main) to Collierville's Shelton Road Wastewater Treatment plant.

While, the lift station is owned by Collierville, Spring Creek Ranch owns most of the capacity rights. Accordingly, agreements are needed with the Town of Collierville and Spring Creek Ranch (The Stanford Group). Finally, an amendment with AFRAM, Inc. is required to produce the construction drawings (CD's) for the LPSS. The Stanford Group and AFRAM resolutions have been prepared and accompany this resolution. Funding in the amount of \$1.1 M has been provided in the FY 09 Budget to construct the system.

## **AGREEMENT**

**Between  
SHELBY COUNTY GOVERNMENT  
And  
THE TOWN OF COLLIERVILLE**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between the Shelby County Government (hereinafter referred to as "County") and The Town of Collierville, Tennessee (hereinafter referred to as "Town").

WHEREAS, the County has received reports from residents that septic systems are failing in the Cotton Creek area of southeast Shelby County located in the Town of Collierville Annexation Reserve Area; and

WHEREAS, the County has performed an engineering study that confirms the existence of septic system failures; and

WHEREAS, the County has determined that a low pressure sewer system (LPSS) collecting solid material in individual septic tanks and conveying the liquid waste to the Town of Collierville Publicly Owned Treatment Works at Shelton Road by connection to the sewer lift station operated by Spring Creek Ranch, LLC is the most efficient and cost effective system to alleviate the environmental problems associated with these failing septic tanks; and

WHEREAS, the County and Town recognize the benefits of having a publicly-owned sanitary sewer treatment system; and

WHEREAS, the Town agrees to accept and treat the wastewater and operate and maintain the collection system at a sewer rate approved by the Town; and

NOW, THEREFORE, in consideration of these premises the parties agree as follows:

1. The County will undertake engineering design and construction of the LPSS for the Cotton Creek area (the "Project"). The Project will consist of construction of low pressure sewer pipes, pumps, and replacement septic tanks, as necessary.
2. The LPSS will transport the liquid waste to the Spring Creek Ranch sewer lift station wet well. From this point, it will be carried by the existing Collierville-Arlington Road force main line to the Town of Collierville Publicly Owned Treatment Works on Shelton Road. The Town agrees to process all liquid waste from the LPSS that is transported to the Spring Creek Ranch sewer lift station wet well. The Town consents to the LPSS being connected to the Spring Creek Ranch sewer lift station wet well subject to the County obtaining the approval of Boyle Investments.
3. A maximum of One Hundred Two (102) residential lots will be eligible for connection to the system ("System Users") during the term of this Agreement. A list of the initial addresses and initial System Users is attached hereto as Exhibit "A" and incorporated fully herein by

reference. Prior to annexing properties serviceable by the sewer system any additional connections in excess of the maximum of 102 residential lots will require approval from the County Engineer and the Town Public Services Director. Copies of this agreement will be given to each property owner by Shelby County prior to their connection to the system.

4. The County will provide engineering plans to the Town for review and approval prior to approval by the County Engineer. During construction, Town personnel will be authorized to access the construction site of the Project to perform quality assurance inspections of the Project.
5. Upon completion of construction and acceptance of the Project and all improvements thereto in writing by the County and the Town, the Project, including the LPSS, will become active and the Town will assume responsibility, for operation and maintenance, of the Project as described herein, to include the LPSS from and including the ball valve in the road right-of-way to and including the Spring Creek Ranch Pump Station upon said written acceptance. After the system has been accepted by the Town and the County, the contractor will provide a one year warranty for the Town of Collierville thru an irrevocable Letter of Credit from a Town of Collierville approved source. After such acceptance, the installation and maintenance (including any periodically necessary pump outs of solid materials) of any septic tank pump, basin assembly, pump controls and /or other system components shall be the responsibility of the respective System User (Residential Property Owner).
6. System users will pay a one-time development fee (\$3,000 currently), connection fee (\$225 currently), a sewer pump station fee (\$15,000 per station, currently) and a monthly sewer fee based on usage to the Town in amounts and in such a manner as determined by the Collierville Board of Mayor and Aldermen for collection and treatment of the wastewater. Fees charged will be the fees that are in place and approved (and, as maybe hereafter adjusted) by the Board of Mayor and Aldermen at the time of the agreement and will be due prior to when treatment commences for any of the lots.
7. The County will provide one hundred percent (100%) of the up front funding for design and construction.
8. The County will collect an administration fee in the amount of two dollars (\$2.00) per month or such other amount as may be determined by the Shelby County Board of County Commissioners from each System User. Said administration fee shall be paid by System Users on monthly water/sewer bill payments which shall be issued and administered thru the county's billing agent, MLGW.
9. Upon annexation of the Cotton Creek area by the Town, the County will cease billing of the administration fee. Following annexation, the Town agrees to continue maintenance and operation of the LPSS from and including the ball valve in the road right-of-way to and including the Spring Creek Ranch Pump Station.
10. Term. The term of this Agreement (the "Term") will commence upon the execution of this agreement and continue through annexation by the Town of the Cotton Creek area.
- 11a. The County will be responsible for making all arrangements with MLGW, the billing agent for the Town of Collierville, to bill the properties for this sewer service, collect the administrative fees and any other fees involved. The County will also pay for all fees

charged by MLGW in connection with collecting fees for the Town and the County. The arrangements with MLGW should include the remittance to the Town of the sewer service fees directly from MLGW and access to MLGW's accounts and records of these customers. The remittance of the administrative fees should be directly to Shelby County. The arrangements are subject to the approval of the Town of Collierville. The agreement with MLGW will require MLGW discontinue water service to any property more than 90 day delinquent on its fees either to Shelby County or the Town of Collierville for sewer service.

12. Notices. Any notices required or permitted to be given under the provisions of this Agreement shall be effective only if in writing and delivered either in person to the County's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Engineering Department  
160 N. Main Street, Suite 350  
Memphis, Tennessee 38103  
Attn.: Michael Oakes, Shelby County Engineer

and

Shelby County Government  
Contract Administration  
160 N. Main St., Suite 550  
Memphis, Tennessee 38103

TOWN: Town of Collierville  
500 Poplar View Parkway  
Collierville, Tennessee 38017  
Attn.: Bill Kilp, Director of Public Services

13. Subject to Funding and Termination. This Agreement is subject to annual appropriations of funds by the Shelby County Government and 100% funding from Shelby County Government. In the event sufficient funds for this Agreement are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then the Project and this Agreement will be terminated. Additionally, this Agreement shall immediately terminate should County be unable to obtain one hundred percent (100%) participation of potential System Users.
14. Relationship of Parties. In the exercise of their respective rights and obligations under this Agreement, each Party acts in an independent capacity, and neither is to be considered the agent of any other.
15. Miscellaneous.
  - A. This Agreement shall not be assigned by the County or the Town without the consent of both Parties

- B. Wherever the singular or masculine is used in this Agreement, it shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
- C. If any section or lesser portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the invalidity of such section or portion shall not affect the validity of the remainder.
- D. This Agreement shall inure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and permitted assigns.
- E. This Agreement may be executed in any number of counterparts, all of which shall together be deemed to be an original and together such counterparts shall constitute one agreement. Execution of this Agreement may be made on copies transmitted by facsimile transmission and executed copies may be sent by facsimile transmission, and transmission of an executed copy shall be deemed to constitute communication of execution and acceptance of this Agreement.
- F. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, the Town agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

16. All terms of this Agreement are contingent upon approval by the Shelby County Board of County Commissioners and the Town of Collierville Board of Mayor and Aldermen

**APPROVED AS TO LEGAL FORM,  
EFFICACY AND PROPRIETY**

**FOR THE COUNTY**

By: \_\_\_\_\_  
Shelby County Contract Administrator/  
Assistant County Attorney

By: \_\_\_\_\_  
A C Wharton, Jr., Mayor  
Shelby County Government

By: \_\_\_\_\_  
Michael E. Oakes, P.E  
Shelby County Engineer

By: \_\_\_\_\_  
Ted Fox, Director  
Shelby County Public Works

**FOR COLLIERVILLE**

By: \_\_\_\_\_  
Linda Kerley, Mayor  
Town of Collierville

By: \_\_\_\_\_  
Tom Cates, Town Attorney



## EXHIBIT A

No.	Street No./Parcel ID	Property Address	Owner	Mailing Address	City	St.	Zip
1	1000	Cold Creek Cove	Leon & Ruth Marr	1000 Cold Creek Cove	Collierville	TN	38017
2	685	Cold Creek Cove	Ed & Donna Mottern	685 Cold Creek Drive	Collierville	TN	38017
3	707	Cold Creek Cove	Steve & Joyce Harrison	707 Cold Creek Cove	Collierville	TN	38017
4	708	Cold Creek Cove	Garry & Patricia Greer	708 Cold Creek Cove	Collierville	TN	38017
5	731	Cold Creek Cove	Norman & Betty Wilson	731 Cold Creek Cove	Collierville	TN	38017
6	732	Cold Creek Cove	Michael & Kim Berry	732 Cold Creek Cove	Collierville	TN	38017
7	750	Cold Creek Cove	James & Kelly Studstill	750 Cold Creek Cove	Collierville	TN	38017
8	755	Cold Creek Cove	Thomas & Rebecca Perusi	755 Cold Creek Cove	Collierville	TN	38017
9	770	Cold Creek Cove	Gary & Sheila Rapp	770 Cold Creek Cove	Collierville	TN	38017
10	775	Cold Creek Cove	Randall & Susan O'Byrnes	775 Cold Creek Cove	Collierville	TN	38017
11	790	Cold Creek Cove	Herschel & Birdie Stokes	790 Cold Creek Cove	Collierville	TN	38017
12	801	Cold Creek Cove	Carolyn Jackson	801 Cold Creek Cove	Collierville	TN	38017
13	810	Cold Creek Cove	Allen & Hollee Lott	810 Cold Creek Cove	Collierville	TN	38017
14	815	Cold Creek Cove	Brian & Cheryl Gardner	815 Cold Creek Cove	Collierville	TN	38017
15	830	Cold Creek Cove	Ricky & Rachel Wherry	830 Cold Creek Cove	Collierville	TN	38017
16	850	Cold Creek Cove	Kevin & Michelle Jankowy	850 Cold Creek Cove	Collierville	TN	38017
17	851	Cold Creek Cove	Morteza Gerani	851 Cold Creek Cove	Collierville	TN	38017
18	870	Cold Creek Cove	Brett & Mary Lynn Nicholson	1042 Moorefield Rd	Collierville	TN	38017
19	881	Cold Creek Cove	Daniel & Beverly Sobolewski	881 Cold Creek Cove	Collierville	TN	38017
20	890	Cold Creek Cove	John & Shelia Collins	890 Cold Creek Cove	Collierville	TN	38017
21	905	Cold Creek Cove	George & Mary Cathey	905 Cold Creek Cove	Collierville	TN	38017
22	916	Cold Creek Cove	Mark & Charee Metts	916 Cold Creek Cove	Collierville	TN	38017
23	927	Cold Creek Cove	Francis & Kitty Rutledge	927 Cold Creek Cove	Collierville	TN	38017
24	936	Cold Creek Cove	Jay & Amberlee Snell	936 Cold Creek Cove	Collierville	TN	38017
25	947	Cold Creek Cove	Kenneth & Renae Motzenbecker	947 Cold Creek Cove	Collierville	TN	38017
26	956	Cold Creek Cove	Mauro & Lisa Gozzo	956 Cold Creek Cove	Collierville	TN	38017
27	971	Cold Creek Cove	Stephen & Leigh Sawicki	971 Cold Creek Cove	Collierville	TN	38017
28	976	Cold Creek Cove	Donald & Susan Mauney	976 Cold Creek Cove	Collierville	TN	38017
29	993	Cold Creek Cove	Bradley & Melanie Bell	993 Cold Creek Cove	Collierville	TN	38017
30	994	Cold Creek Cove	Kim & Robert Walpole	994 Cold Creek Cove	Collierville	TN	38017
31	650	Cotton Creek Drive	John & Michelle Leatherwood	650 Cotton Creek Drive	Collierville	TN	38017
32	655	Cotton Creek Drive	McClinton & Alexandrina Jagers	655 Cotton Creek Drive	Collierville	TN	38017
33	670	Cotton Creek Drive	Thomas & Renee Toth	670 Cotton Creek Drive	Collierville	TN	38017
34	675	Cotton Creek Drive	Michael & Elissa Mars	675 Cotton Creek Drive	Collierville	TN	38017
35	690	Cotton Creek Drive	Mike & Kim Scott	690 Cotton Creek Drive	Collierville	TN	38017
36	715	Cotton Creek Drive	Paul & Cynthia Vaughn	715 Cotton Creek Drive	Collierville	TN	38017

## EXHIBIT A

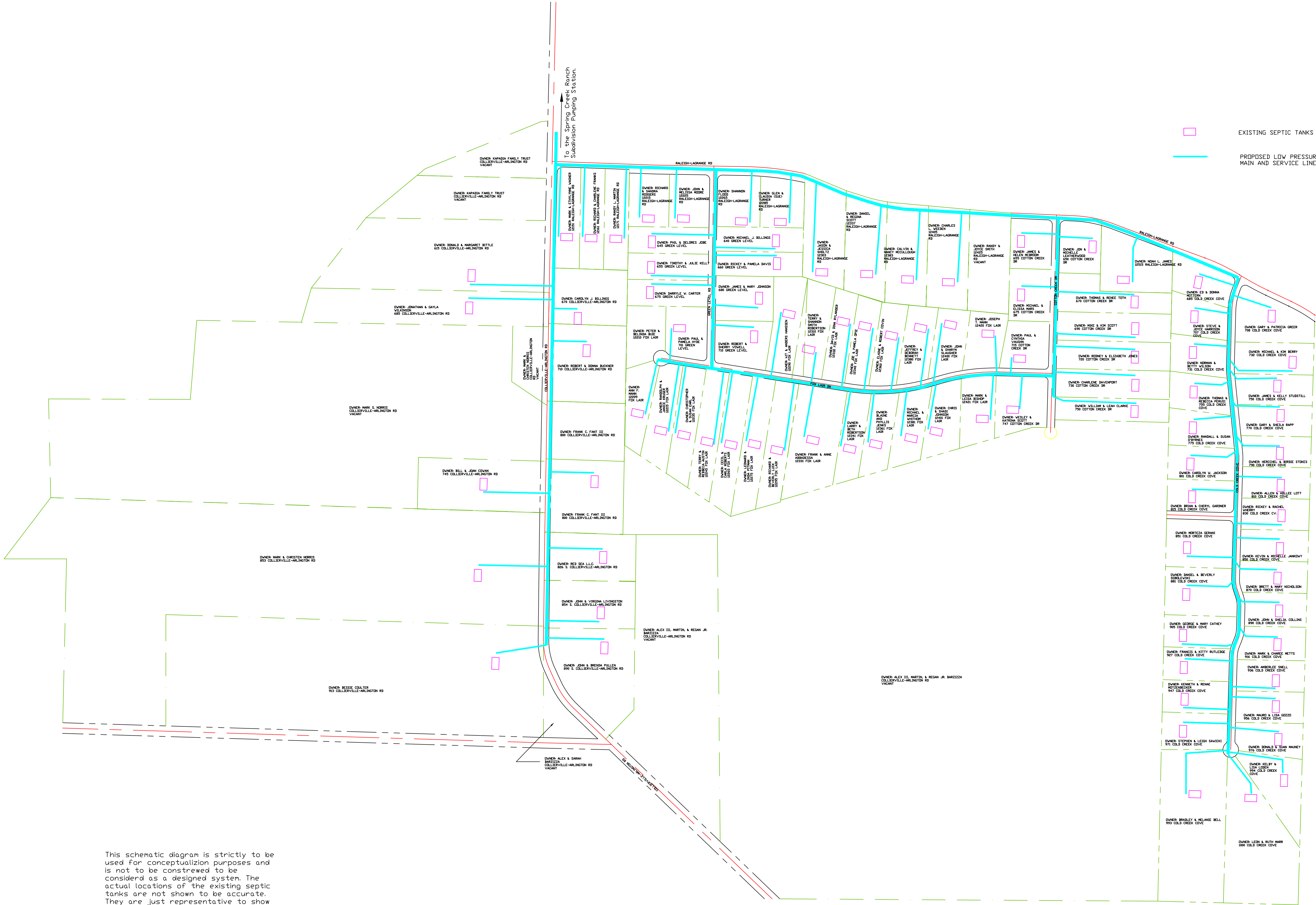
No.	Street No./Parcel ID	Property Address	Owner	Mailing Address	City	St.	Zip
37	720	Cotton Creek Drive	Rodney & Elizabeth Jones	720 Cotton Creek Drive	Collierville	TN	38017
38	730	Cotton Creek Drive	Michael & Charlene Davenport	730 Cotton Creek Drive	Collierville	TN	38017
39	747	Cotton Creek Drive	Wesley & Katrina Scott	747 Cotton Creek Drive	Collierville	TN	38017
40	750	Cotton Creek Drive	William & Leah Clarke	750 Cotton Creek Drive	Collierville	TN	38017
41	12209	Fox Lair Drive	Ann Mann	12209 Fox Lair Drive	Collierville	TN	38017
42	12215	Fox Lair Drive	Randolph & Janice Kruger	12215 Fox Lair Drive	Collierville	TN	38017
43	12235	Fox Lair Drive	Christopher & Susan Earl	12235 Fox Lair Drive	Collierville	TN	38017
44	12245	Fox Lair Drive	Terry & Rebecca Austin	12245 Fox Lair Drive	Collierville	TN	38017
45	12265	Fox Lair Drive	Cecil & Carla Roberts	12265 Fox Lair Drive	Collierville	TN	38017
46	12275	Fox Lair Drive	Leonard & Linda Pitman	12275 Fox Lair Drive	Collierville	TN	38017
47	12290	Fox Lair Drive	Kit & Anders Hanssen	12290 Fox Lair Drive	Collierville	TN	38017
48	12295	Fox Lair Drive	Richard & Beverly Luck	12295 Fox Lair Drive	Collierville	TN	38017
49	12310	Fox Lair Drive	Terry & Sharon Smith	12310 Fox Lair Drive	Collierville	TN	38017
50	12330	Fox Lair Drive	David & Dina Rylander	12330 Fox Lair Drive	Collierville	TN	38017
51	12331	Fox Lair Drive	Frank & Anne Abbadessa	12331 Fox Lair Drive	Collierville	TN	38017
52	12340	Fox Lair Drive	Joe & Pamela Opie	12340 Fox Lair Drive	Collierville	TN	38017
53	12341	Fox Lair Drive	Larry & Betty Robertson	12341 Fox Lair Drive	Collierville	TN	38017
54	12360	Fox Lair Drive	Elaine & Robert Covin	12360 Fox Lair Drive	Collierville	TN	38017
55	12361	Fox Lair Drive	Blaine & Phyllis Jenks	12361 Fox Lair Drive	Collierville	TN	38017
56	12380	Fox Lair Drive	Jeffrey & Deborah Bennett	12380 Fox Lair Drive	Collierville	TN	38017
57	12381	Fox Lair Drive	Michael & Marcia Whitehorn	12381 Fox Lair Drive	Collierville	TN	38017
58	12400	Fox Lair Drive	John & Sharon Slaughter	9301 Arrowhead Court	Brentwood	TN	37027
59	12401	Fox Lair Drive	Chris & Shadi Johnson	12401 Fox Lair Drive	Collierville	TN	38017
60	12420	Fox Lair Drive	Joseph Mann	12420 Fox Lair Drive	Collierville	TN	38017
61	12421	Fox Lair Drive	Mark & Leisa Bishop	12421 Fox Lair Drive	Collierville	TN	38017
62	640	Green Level Road	Michael Billings	640 Green Level Road	Collierville	TN	38017
63	645	Green Level Road	Phillip & Delores Jobe	645 Green Level Road	Collierville	TN	38017
64	655	Green Level Road	Timothy & Julie Kelly	655 Green Level Road	Collierville	TN	38017
65	660	Green Level Road	Rickey & Pamela Davis	660 Green Level Road	Collierville	TN	38017
66	675	Green Level Road	Darryle Carter	675 Green Level Road	Collierville	TN	38017
67	680	Green Level Road	James & Mary Johnson	680 Green Level Road	Collierville	TN	38017
68	701	Green Level Road	Paul & Pamela Hyde	701 Green Level Road	Collierville	TN	38017
69	710	Green Level Road	Robert & Sherry Vowell	710 Green Level Road	Collierville	TN	38017
70	12151	Raleigh-LaGrange Road	Mark & Ethlynnne Wagner	12151 Raleigh-LaGrange Road	Collierville	TN	38017
71	12161	Raleigh-LaGrange Road	Richard & Charlene Franks	12161 Raleigh-LaGrange Road	Collierville	TN	38017
72	12171	Raleigh-LaGrange Road	Randy Martin	12171 Raleigh-LaGrange Road	Collierville	TN	38017

## EXHIBIT A

No.	Street No./Parcel ID	Property Address	Owner	Mailing Address	City	St.	Zip
73	12215	Raleigh-LaGrange Road	Richard & Sandra Rodgers	12215 Raleigh-LaGrange Road	Collierville	TN	38017
74	12225	Raleigh-LaGrange Road	John & Melissa Moore	12225 Raleigh-LaGrange Road	Collierville	TN	38017
75	12265	Raleigh-LaGrange Road	Shannon Flood	12265 Raleigh-LaGrange Road	Collierville	TN	38017
76	12285	Raleigh-LaGrange Road	Claudia Stinson-Turner & Glen Turner	12285 Raleigh-LaGrange Road	Collierville	TN	38017
77	12303	Raleigh-LaGrange Road	Jason & Jessica Sholtz	12303 Raleigh-LaGrange Road	Collierville	TN	38017
78	12337	Raleigh-LaGrange Road	David & Regina Scott	12337 Raleigh-LaGrange Road	Collierville	TN	38017
79	12383	Raleigh-LaGrange Road	Calvin & Nancy McCullough	12383 Raleigh-LaGrange Road	Collierville	TN	38017
80	12405	Raleigh-LaGrange Road	Charles L. Weeden	12405 Raleigh-LaGrange Road	Collierville	TN	38017
81	12515	Raleigh-LaGrange Road	James Noah	12515 Raleigh-LaGrange Road	Collierville	TN	38017
82	615	S Collierville-Arlington Rd	Donald & Margaret Bittle	615 S Collierville-Arlington Road	Collierville	TN	38017
83	670	S Collierville-Arlington Rd	Carolyn Billings	670 S Collierville-Arlington Road	Collierville	TN	38017
84	685	S Collierville-Arlington Rd	Jon and Gayla Wilkinson	685 S Collierville-Arlington Road	Collierville	TN	38017
85	710	S Collierville-Arlington Rd	Robert & Donna Buckner	710 S Collierville-Arlington Road	Collierville	TN	38017
86	745	S Collierville-Arlington Rd	Bill & Joan Cowan	745 S Collierville-Arlington Road	Collierville	TN	38017
87	800	S Collierville-Arlington Rd	Frank Fant	800 S Collierville-Arlington Road	Collierville	TN	38017
88	826	S Collierville-Arlington Rd	Red Sea L.L.C.	826 S Collierville-Arlington Road	Collierville	TN	38017
89	853	S Collierville-Arlington Rd	Mark & Christen Norris	853 S Collierville-Arlington Road	Collierville	TN	38017
90	854	S Collierville-Arlington Rd	John & Virginia Livingston	854 S Collierville-Arlington Road	Collierville	TN	38017
91	890	S Collierville-Arlington Rd	Clark & Beth Smeltzer	890 S Collierville-Arlington Road	Collierville	TN	38017
92	913	S Collierville-Arlington Rd	Bessie Coulter	913 S Collierville-Arlington Road	Collierville	TN	38017
93	D022300138	S Collierville-Arlington Rd	Alex III and J Martin Regan Jr. Barzizza	7625 Appling Center Drive	Memphis	TN	38133
94	D022300101	S Collierville-Arlington Rd	Alex III and J Martin Regan Jr. Barzizza	7625 Appling Center Drive	Memphis	TN	38133
95	D022300099	S Collierville-Arlington Rd	Alex III and Sarah Barzizza	7625 Appling Center Drive	Memphis	TN	38133
96	D022300183	S Collierville-Arlington Rd	Mark S. Norris	853 S Collierville-Arlington Road	Collierville	TN	38017
97	D022300145	S Collierville-Arlington Rd	Mark and Christen Norris	853 S Collierville-Arlington Road	Collierville	TN	38017
98	D022300089	S Collierville-Arlington Rd	Todd and Corinne Derenburger	152 McDonald Glenn Cove	Collierville	TN	38017
99	D022300091	S Collierville-Arlington Rd	Malcolm and Sharon Vega	9861 Garden Place	Germantown	TN	38139
100	D022300112	Raleigh-LaGrange Road	Randy and Joyce Smith	3486 Manor Grove Cove	Collierville	TN	38017
101	D0223EA00006	Fox Lair Drive	Peter & Belinda Buie	10579 Cambrooke Cove	Collierville	TN	38017
102	D022300043	Collierville-Arlington Road	Frank Fant III	800 Collierville-Arlington Road	Collierville	TN	38017

K:\Projects\2006\06-128 Cotton Creek\_Drawings\dwg\Properties\CottonCreek\042436-04\_LowPressSewSys.dwg, 24x36, 02/12/2008 1:52:23 PM, AFRAM Corporation

This schematic diagram is strictly to be used for conceptualization purposes and is not to be construed to be considered as a designed system. The actual locations of the existing septic tanks are not shown to be accurate. They are just representative to show the concept of the design, not for accuracy purposes.



## 06-128 Cotton Creek Sewer Study

Shelby County Contract #CA074509

NO.	DATE	DESCRIPTION

FILE NAME:  
CottonCreek\042436-04\_LowPressSewSys.dwg

DATE:  
02/12/08

DRAWN: KWC  
CHECKED: KWC

SHEET TITLE:  
C1.1  
Cotton Creek  
Subdivision

SCALE:  
1"=3000'

SHEET NO.:  
1

OF 1

Item # \_\_\_\_\_

Prepared by: Michael Oakes  
Engineering

Approved by: \_\_\_\_\_  
County Attorney

**A RESOLUTION APPROVING AN AGREEMENT WITH SPRING CREEK RANCH, LLC AND AN EXPENDITURE OF FUNDS IN THE AMOUNT OF \$98,400.00 FOR THE RIGHTS TO CONNECT THE PROPOSED COTTON CREEK AREA SEWER SYSTEM TO THE SPRING CREEK RANCH PUMP STATION FOR TRANSPORTION OF THE WASTEWATER TO THE TOWN OF COLLIERVILLE PUBLICLY OWNED TREATMENT WORKS AND THIS ITEM REQUIRES AN EXPENDITURE OF COUNTY CIP FUNDS IN THE AMOUNT OF \$98,400.00. SPONSORED BY COMMISSIONER WYATT BUNKER.**

---

**WHEREAS,** Some one hundred and two (102) lots are located in the area known as Cotton Creek which includes the subdivisions of Kirkland Estates, Cotton Creek and Fox Hollow Farms (Phases I and II); and

**WHEREAS,** The residents of this area have experienced problems with the septic tanks due primarily to inadequate soil percolation rates; and

**WHEREAS,** The result of these problems represents a health hazard to the neighborhood and downstream water; and

**WHEREAS,** It has been determined that a Low Pressure Sewer System (LPSS) is the most cost effective manner to collect and transport the wastewater from the lots; and

**WHEREAS,** The Town of Collierville has agreed in principle to treat their wastewater flow at the Shelton Road Treatment Plant and a resolution for approval of an agreement with Collierville is an accompanying item to this resolution; and

**WHEREAS,** The Stanford Group in their capacity as operator of the Spring Creek Ranch Country Club has agreed to allow their water to be transported to the Treatment Plant by connection to a Lift (pump) Station owned and operated by the Town of Collierville to which Stanford Group holds capacity rights and obligations; and

**WHEREAS,** The County is agreeing to reimburse Spring Creek Ranch, LLC in the amount of \$98,400.00 for capital costs incurred and a pro-rata share of the up to \$40,000.00 liability assigned to Spring Creek Ranch, LLC in their development agreement with the Town of Collierville; and

**WHEREAS,** AFRAM, Inc. has been retained to study the problems, provide recommendations for correction and prepare construction documents for system installation; and

**WHEREAS,** An amendment to the contract with AFRAM to provide for design of the LPSS is being submitted as a companion item to this resolution; and

**WHEREAS,** Approval of the amendment to the contract with AFRAM is dependent on approval of the agreement with the Town of Collierville; and

**WHEREAS,** It is necessary to appropriate funds in the amount of \$98,400.00 to fund this agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That the Mayor be authorized to sign the Agreement with the Town of Collierville providing for treatment of wastewater from the Cotton Creek area and that such agreement must be in effect prior to signing a contract with AFRAM for the design of plans for the new system.

**BE IT FURTHER RESOLVED,** That funds are hereby appropriated in the amount of \$98,400.00 from the FY 2008-2009 CIP Budget for CIP Project No. 100106, Cotton Creek Sewer System.

**BE IT FURTHER RESOLVED,** That the Mayor and Director of Administration and Finance are hereby authorized to issue their warrant or warrants in amounts not to exceed \$98,400.00 for the purposed contained in this resolution to Spring Creek Ranch, LLC and to proper credit in their accounting therefore.

\_\_\_\_\_  
A C Wharton, Jr., Mayor

Date:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED \_\_\_\_\_



**SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET**

Referred to Commission Committee Public Works

For Commission Action on \_\_\_\_\_

**DESCRIPTION OF ITEM:**

**A RESOLUTION APPROVING AN AGREEMENT WITH SPRING CREEK RANCH, LLC AND AN EXPENDITURE OF FUNDS IN THE AMOUNT OF \$98,400.00 FOR THE RIGHTS TO CONNECT THE PROPOSED COTTON CREEK AREA SEWER SYSTEM TO THE SPRING CREEK RANCH PUMP STATION FOR TRANSPORTION OF THE WASTEWATER TO THE TOWN OF COLLIERVILLE PUBLICLY OWNED TREATMENT WORKS AND THIS ITEM REQUIRES AN EXPENDITURE OF COUNTY CIP FUNDS IN THE AMOUNT OF \$98,400.00. SPONSORED BY COMMISSIONER WYATT BUNKER.**

**CHECK ALL THAT APPLY BELOW:**

\_\_\_\_\_ This Action does NOT require expenditure of funds.

  X   This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_; County CIP Funds: \$ 98,400.00

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** Engineering

**APPROVAL:**

Dept. Head: Michael E. Oakes, P.E. – (901) 545-4332 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Elected Official: Commissioner Wyatt Bunker - (901) 545-4301 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Division Director: Ted Fox - (901) 545-4565 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: Jim Huntzicker – (901) 545-4514 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Finance Dept. Mike Swift – (901) 545-4449 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

County Attorney: Pam Skelton (901) 545-4362 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: Jim Huntzicker – (901) 545-4514 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

## SUMMARY SHEET

### **I. Description of Item**

This resolution approves an agreement with the Stanford Group to connect the Cotton Creek Area to the Spring Creek Ranch sewer system.

### **II. Source and Amount of Funding**

#### **A. Amount Expended/Budget Line Item**

##### **FY 2008-2009 CIP BUDGET FOR PROJECT NO. 100106, COTTON CREEK**

Original Allocation	\$ 1,200,000.00
Request in Companion Resolution (AFRAM Award)	< 133,112.20 >
Balance	\$ 1,066,887.80
This Request	\$ 98,400.00
Balance	<u>\$ 968,487.80</u>

#### **B. All Costs (Direct/Indirect)**

1. Spring Creek Ranch, LLC capital costs reimbursement - \$98,400.00
2. Spring Creek Ranch, LLC pro-rata share of up to \$40,000.00 odor abatement liability

#### **C. Additional or Subsequent Obligations or Expenses of Shelby County**

1. Design consultant's fee – \$200,235.36 (\$67,113.16 appropriated in FY 06-07 for study)
2. Estimated construction costs - \$950,000.00

### **III. Contract Items**

- A. Type of Contract
- B. Terms

### **IV. Additional Information Relevant to Approval of This Item**

Over a period of about two decades, developments were approved in these subdivisions upon review by County Health Department officials using only U.S. Soil Conservation Service soils maps. The area is also in the Wolf River floodplain and is, thus, very flat and poorly drained. Over the years, many residents have reported problems with water from the septic tanks standing on their lots. This water should soak (percolate) into the ground but the amount of clays in these local soils make this impossible at an adequate rate. Responsibility for developing in floodplains and determining adequacy of soils for use in support of septic tanks rests with the developer, individual home builder and owner in accordance with State and County Regulations. However, since this problem could eventually result in health problems by pollution of downstream waters, a systemic solution is considered to be in the County's best interest.

AFRAM, Inc. has been retained and has performed a study which confirmed that the soils comprising most of the lots of these subdivisions are unable to percolate properly. Alternatives were considered and the installation of a Low Pressure Sewer System (LPSS) is considered to provide the most efficient solution at the best cost. This system collects the water from the septic tanks by gravity flow,

when possible, and uses small pumps at each tank when gravity flow will not work. This “grey” water is then pumped to a large sewer pump (lift station) where it is pumped along a pressure sewer line (force main) to Collierville’s Shelton Road Wastewater Treatment plant.

While, the lift station is owned by Collierville, Spring Creek Ranch owns most of the capacity rights. Accordingly, agreements are needed with the Town of Collierville and Spring Creek Ranch (The Stanford Group). As part of the Spring Creek Ranch agreement, Shelby County is being asked to reimburse capital costs incurred in the amount of \$98,400.00 and a pro-rata share of a \$40,000.00 odor abatement liability assigned in the development agreement with the Collierville. Finally, an amendment with AFRAM, Inc. is required to produce the construction drawings (CD’s) for the LPSS. The Town of Collierville and AFRAM resolutions have been prepared and accompany this resolution. Funding in the amount of approximately \$1.1 M has been provided in the FY 09 Budget to design and construct the system.

**AGREEMENT**  
**Between**  
**SHELBY COUNTY GOVERNMENT**  
**And**  
**SPRING CREEK, LLC**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between the Shelby County Government (hereinafter referred to as "County") and Spring Creek, LLC (hereinafter referred to as "Spring Creek").

WHEREAS, the County has received reports from residents that septic systems are failing in the Cotton Creek area of southeast Shelby County located in the Town of Collierville Annexation Reserve; and

WHEREAS, the County has performed an engineering study that confirms the existence of septic system failures; and

WHEREAS, the County has determined that a low pressure sewer system (LPSS) which collects solid material in individual septic tanks and conveying the liquid waste to the Town of Collierville Publicly Owned Treatment Works at Shelton Road by connection to the sewer lift station operated by the Town of Collierville on behalf of Spring Creek is the most efficient and cost effective system to alleviate the environmental problems associated with these failing septic tanks; and

WHEREAS, the sewer lift station was constructed by forces under contract with Spring Creek which holds remaining capacity rights in agreement with the Town of Collierville (hereinafter referred to as "Town"); and

WHEREAS, Spring Creek has agreed to the conditional use of the excess capacity of the lift station and force main by County for Cotton Creek residents only.

NOW, THEREFORE, in consideration of these premises the parties agree as follows:

1. The County will undertake engineering design and construction of the LPSS for the Cotton Creek area (the "Project"). The Project will consist of construction of low pressure sewer pipes, pumps, and replacement septic tanks, as necessary.
2. The LPSS will transport the liquid waste to the Spring Creek collection system. From this point, it will be carried by the existing Collierville-Arlington Road force main line to the Town of Collierville Publicly Owned Treatment Works on Shelton Road. The Town has agreed to process all liquid waste from the LPSS that is transported to the connection of the LPSS to the Collierville-Arlington Road force main line. The Town has consented to the LPSS being connected to the Collierville-Arlington Road force main line, subject to the County obtaining the approval of Spring Creek and its developer Boyle North Company, L.L.C.
3. A revolving maximum of One Hundred and two (102) residential lots will be eligible for connection to the system ("System Users") during the term of this Agreement. A list of the

initial addresses and initial System Users is attached hereto as Exhibit "A" and incorporated fully herein by reference. Additional connections in excess of the revolving maximum of 102 residential lots are not permitted.

4. The County will provide engineering plans to Spring Creek for review and approval by Spring Creek prior to approval by the County Engineer. During construction, Spring Creek personnel will be authorized to access the construction site of the Project to perform quality assurance inspections of the Project.
5. The County will assure that construction is performed in such a manner that service to residences in Spring Creek Ranch planned development is not interrupted.
6. The County will return all areas disturbed to their pre-construction conditions. This will include but not be limited to all landscaping, irrigation, signage, lighting, fencing, pavement, etc. at no expense to Spring Creek.
7. The County shall pay to Spring Creek \$98,400.00 for capital costs incurred by Spring Creek within ten (10) days of the date upon which the County awards the construction contract for completion of the Project to a general contractor.
8. The County also agrees to a pro-rata share of the up to Forty thousand dollar (\$40,000.00) liability assigned to Spring Creek in agreement with the Town of Collierville, a copy of which contract is attached hereto as Exhibit A. The County accepts no other liability or obligations set forth in the attached contract.
9. Term. The term of this Agreement (the "Term") will commence upon the execution of this Agreement and continue through annexation by the Town of Collierville of the Cotton Creek area.
10. Notices. Any notices required or permitted to be given under the provisions of this Agreement shall be effective only if in writing and delivered either in person to the County's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Engineering Department  
160 N. Main Street, Suite 350  
Memphis, Tennessee 38103  
Attn.: Michael Oakes, Shelby County Engineer  
and  
Shelby County Government  
Contract Administration  
160 N. Main St., Suite 550  
Memphis, Tennessee 38103

SPRING CREEK: Attn: Scott Nottowich  
Stanford Group Company  
6075 Poplar Avenue, Suite 300  
Memphis, Tennessee 38119

and

Attn: Gary Thompson  
Boyle North Company, L.L.C.  
5900 Poplar Avenue, Suite 100  
Memphis, Tennessee 38119

11. Subject to Funding and Termination. This Agreement is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Agreement are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then the Project and this Agreement will be terminated. If funding has not occurred by December 10, 2011, then this Agreement shall automatically terminate and shall be of no further force or effect. Additionally, this Agreement shall immediately terminate should County be unable to obtain one hundred percent (100%) participation of potential System Users.
12. Relationship of Parties. In the exercise of their respective rights and obligations under this Agreement, each Party acts in an independent capacity, and neither is to be considered the agent of any other.
13. Miscellaneous.
  - A. This Agreement shall not be assigned by the County or Spring Creek without the consent of both Parties
  - B. Wherever the singular or masculine is used in this Agreement, it shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
  - C. If any section or lesser portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the invalidity of such section or portion shall not affect the validity of the remainder.
  - D. This Agreement shall inure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and permitted assigns.
  - E. This Agreement may be executed in any number of counterparts, all of which shall together be deemed to be an original and together such counterparts shall constitute one agreement. Execution of this Agreement may be made on copies transmitted by facsimile transmission and executed copies may be sent by facsimile transmission, and transmission of an executed copy shall be deemed to constitute communication of execution and acceptance of this Agreement.
  - F. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, the Town agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State



of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

14. All terms of this Agreement are contingent upon approval by the Shelby County Board of County Commissioners and the Town of Collierville Board of Mayor and Aldermen

**APPROVED AS TO LEGAL FORM,  
EFFICACY AND PROPRIETY**

**FOR THE COUNTY**

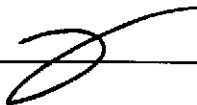
By: \_\_\_\_\_  
Shelby County Contract Administrator/  
Assistant County Attorney


By: \_\_\_\_\_  
A C Wharton, Jr., Mayor  
Shelby County Government

By: \_\_\_\_\_  
Ted Fox, Director  
Shelby County Public Works

By: \_\_\_\_\_  
Michael E. Oakes, P.E.  
Shelby County Engineer

**FOR SPRING CREEK, L.L.C.**

By:  Ross Meyer Chief manager

By:  Scott Notovich Chief manager

By: \_\_\_\_\_



## EXHIBIT A

No.	Street No./Parcel ID	Property Address	Owner	Mailing Address	City	St.	Zip
1	1000	Cold Creek Cove	Leon & Ruth Marr	1000 Cold Creek Cove	Collierville	TN	38017
2	685	Cold Creek Cove	Ed & Donna Mottern	685 Cold Creek Drive	Collierville	TN	38017
3	707	Cold Creek Cove	Steve & Joyce Harrison	707 Cold Creek Cove	Collierville	TN	38017
4	708	Cold Creek Cove	Garry & Patricia Greer	708 Cold Creek Cove	Collierville	TN	38017
5	731	Cold Creek Cove	Norman & Betty Wilson	731 Cold Creek Cove	Collierville	TN	38017
6	732	Cold Creek Cove	Michael & Kim Berry	732 Cold Creek Cove	Collierville	TN	38017
7	750	Cold Creek Cove	James & Kelly Studstill	750 Cold Creek Cove	Collierville	TN	38017
8	755	Cold Creek Cove	Thomas & Rebecca Perusi	755 Cold Creek Cove	Collierville	TN	38017
9	770	Cold Creek Cove	Gary & Sheila Rapp	770 Cold Creek Cove	Collierville	TN	38017
10	775	Cold Creek Cove	Randall & Susan O'Byrnes	775 Cold Creek Cove	Collierville	TN	38017
11	790	Cold Creek Cove	Herschel & Birdie Stokes	790 Cold Creek Cove	Collierville	TN	38017
12	801	Cold Creek Cove	Carolyn Jackson	801 Cold Creek Cove	Collierville	TN	38017
13	810	Cold Creek Cove	Allen & Hollee Lott	810 Cold Creek Cove	Collierville	TN	38017
14	815	Cold Creek Cove	Brian & Cheryl Gardner	815 Cold Creek Cove	Collierville	TN	38017
15	830	Cold Creek Cove	Ricky & Rachel Wherry	830 Cold Creek Cove	Collierville	TN	38017
16	850	Cold Creek Cove	Kevin & Michelle Jankowy	850 Cold Creek Cove	Collierville	TN	38017
17	851	Cold Creek Cove	Morteza Gerani	851 Cold Creek Cove	Collierville	TN	38017
18	870	Cold Creek Cove	Brett & Mary Lynn Nicholson	1042 Moorefield Rd	Collierville	TN	38017
19	881	Cold Creek Cove	Daniel & Beverly Sobolewski	881 Cold Creek Cove	Collierville	TN	38017
20	890	Cold Creek Cove	John & Shelia Collins	890 Cold Creek Cove	Collierville	TN	38017
21	905	Cold Creek Cove	George & Mary Cathey	905 Cold Creek Cove	Collierville	TN	38017
22	916	Cold Creek Cove	Mark & Charee Metts	916 Cold Creek Cove	Collierville	TN	38017
23	927	Cold Creek Cove	Francis & Kitty Rutledge	927 Cold Creek Cove	Collierville	TN	38017
24	936	Cold Creek Cove	Jay & Amberlee Snell	936 Cold Creek Cove	Collierville	TN	38017
25	947	Cold Creek Cove	Kenneth & Renae Motzenbecker	947 Cold Creek Cove	Collierville	TN	38017
26	956	Cold Creek Cove	Mauro & Lisa Gozzo	956 Cold Creek Cove	Collierville	TN	38017
27	971	Cold Creek Cove	Stephen & Leigh Sawicki	971 Cold Creek Cove	Collierville	TN	38017
28	976	Cold Creek Cove	Donald & Susan Mauney	976 Cold Creek Cove	Collierville	TN	38017
29	993	Cold Creek Cove	Bradley & Melanie Bell	993 Cold Creek Cove	Collierville	TN	38017
30	994	Cold Creek Cove	Kim & Robert Walpole	994 Cold Creek Cove	Collierville	TN	38017
31	650	Cotton Creek Drive	John & Michelle Leatherwood	650 Cotton Creek Drive	Collierville	TN	38017
32	655	Cotton Creek Drive	McClinton & Alexandrina Jagers	655 Cotton Creek Drive	Collierville	TN	38017
33	670	Cotton Creek Drive	Thomas & Renee Toth	670 Cotton Creek Drive	Collierville	TN	38017
34	675	Cotton Creek Drive	Michael & Elissa Mars	675 Cotton Creek Drive	Collierville	TN	38017
35	690	Cotton Creek Drive	Mike & Kim Scott	690 Cotton Creek Drive	Collierville	TN	38017
36	715	Cotton Creek Drive	Paul & Cynthia Vaughn	715 Cotton Creek Drive	Collierville	TN	38017

## EXHIBIT A

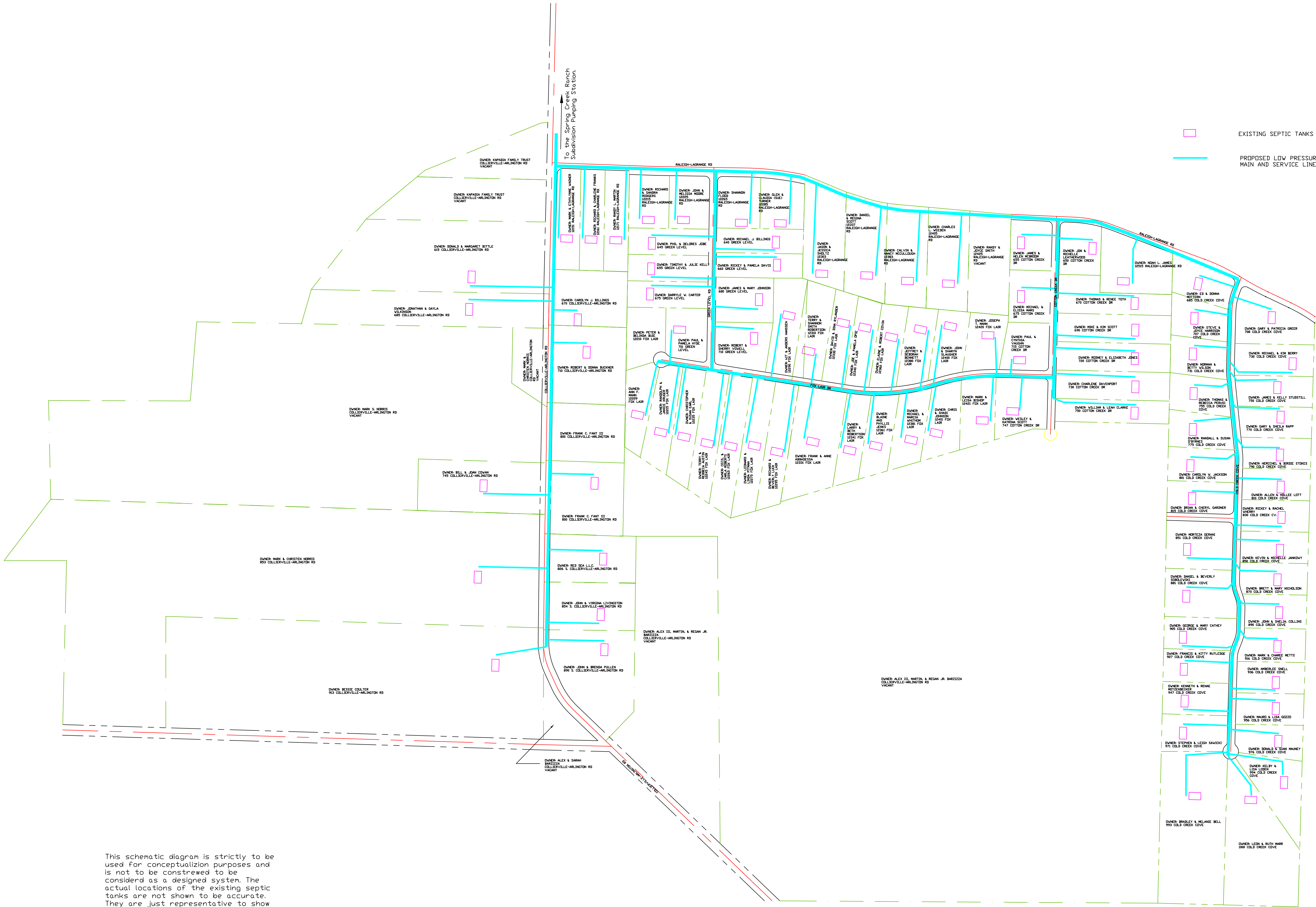
No.	Street No./Parcel ID	Property Address	Owner	Mailing Address	City	St.	Zip
37	720	Cotton Creek Drive	Rodney & Elizabeth Jones	720 Cotton Creek Drive	Collierville	TN	38017
38	730	Cotton Creek Drive	Michael & Charlene Davenport	730 Cotton Creek Drive	Collierville	TN	38017
39	747	Cotton Creek Drive	Wesley & Katrina Scott	747 Cotton Creek Drive	Collierville	TN	38017
40	750	Cotton Creek Drive	William & Leah Clarke	750 Cotton Creek Drive	Collierville	TN	38017
41	12209	Fox Lair Drive	Ann Mann	12209 Fox Lair Drive	Collierville	TN	38017
42	12215	Fox Lair Drive	Randolph & Janice Kruger	12215 Fox Lair Drive	Collierville	TN	38017
43	12235	Fox Lair Drive	Christopher & Susan Earl	12235 Fox Lair Drive	Collierville	TN	38017
44	12245	Fox Lair Drive	Terry & Rebecca Austin	12245 Fox Lair Drive	Collierville	TN	38017
45	12265	Fox Lair Drive	Cecil & Carla Roberts	12265 Fox Lair Drive	Collierville	TN	38017
46	12275	Fox Lair Drive	Leonard & Linda Pitman	12275 Fox Lair Drive	Collierville	TN	38017
47	12290	Fox Lair Drive	Kit & Anders Hanssen	12290 Fox Lair Drive	Collierville	TN	38017
48	12295	Fox Lair Drive	Richard & Beverly Luck	12295 Fox Lair Drive	Collierville	TN	38017
49	12310	Fox Lair Drive	Terry & Sharon Smith	12310 Fox Lair Drive	Collierville	TN	38017
50	12330	Fox Lair Drive	David & Dina Rylander	12330 Fox Lair Drive	Collierville	TN	38017
51	12331	Fox Lair Drive	Frank & Anne Abbadessa	12331 Fox Lair Drive	Collierville	TN	38017
52	12340	Fox Lair Drive	Joe & Pamela Opie	12340 Fox Lair Drive	Collierville	TN	38017
53	12341	Fox Lair Drive	Larry & Betty Robertson	12341 Fox Lair Drive	Collierville	TN	38017
54	12360	Fox Lair Drive	Elaine & Robert Covin	12360 Fox Lair Drive	Collierville	TN	38017
55	12361	Fox Lair Drive	Blaine & Phyllis Jenks	12361 Fox Lair Drive	Collierville	TN	38017
56	12380	Fox Lair Drive	Jeffrey & Deborah Bennett	12380 Fox Lair Drive	Collierville	TN	38017
57	12381	Fox Lair Drive	Michael & Marcia Whitehorn	12381 Fox Lair Drive	Collierville	TN	38017
58	12400	Fox Lair Drive	John & Sharon Slaughter	9301 Arrowhead Court	Brentwood	TN	37027
59	12401	Fox Lair Drive	Chris & Shadi Johnson	12401 Fox Lair Drive	Collierville	TN	38017
60	12420	Fox Lair Drive	Joseph Mann	12420 Fox Lair Drive	Collierville	TN	38017
61	12421	Fox Lair Drive	Mark & Leisa Bishop	12421 Fox Lair Drive	Collierville	TN	38017
62	640	Green Level Road	Michael Billings	640 Green Level Road	Collierville	TN	38017
63	645	Green Level Road	Phillip & Delores Jobe	645 Green Level Road	Collierville	TN	38017
64	655	Green Level Road	Timothy & Julie Kelly	655 Green Level Road	Collierville	TN	38017
65	660	Green Level Road	Rickey & Pamela Davis	660 Green Level Road	Collierville	TN	38017
66	675	Green Level Road	Darryle Carter	675 Green Level Road	Collierville	TN	38017
67	680	Green Level Road	James & Mary Johnson	680 Green Level Road	Collierville	TN	38017
68	701	Green Level Road	Paul & Pamela Hyde	701 Green Level Road	Collierville	TN	38017
69	710	Green Level Road	Robert & Sherry Vowell	710 Green Level Road	Collierville	TN	38017
70	12151	Raleigh-LaGrange Road	Mark & Ethlynnne Wagner	12151 Raleigh-LaGrange Road	Collierville	TN	38017
71	12161	Raleigh-LaGrange Road	Richard & Charlene Franks	12161 Raleigh-LaGrange Road	Collierville	TN	38017
72	12171	Raleigh-LaGrange Road	Randy Martin	12171 Raleigh-LaGrange Road	Collierville	TN	38017

## EXHIBIT A

No.	Street No./Parcel ID	Property Address	Owner	Mailing Address	City	St.	Zip
73	12215	Raleigh-LaGrange Road	Richard & Sandra Rodgers	12215 Raleigh-LaGrange Road	Collierville	TN	38017
74	12225	Raleigh-LaGrange Road	John & Melissa Moore	12225 Raleigh-LaGrange Road	Collierville	TN	38017
75	12265	Raleigh-LaGrange Road	Shannon Flood	12265 Raleigh-LaGrange Road	Collierville	TN	38017
76	12285	Raleigh-LaGrange Road	Claudia Stinson-Turner & Glen Turner	12285 Raleigh-LaGrange Road	Collierville	TN	38017
77	12303	Raleigh-LaGrange Road	Jason & Jessica Sholtz	12303 Raleigh-LaGrange Road	Collierville	TN	38017
78	12337	Raleigh-LaGrange Road	David & Regina Scott	12337 Raleigh-LaGrange Road	Collierville	TN	38017
79	12383	Raleigh-LaGrange Road	Calvin & Nancy McCullough	12383 Raleigh-LaGrange Road	Collierville	TN	38017
80	12405	Raleigh-LaGrange Road	Charles L. Weeden	12405 Raleigh-LaGrange Road	Collierville	TN	38017
81	12515	Raleigh-LaGrange Road	James Noah	12515 Raleigh-LaGrange Road	Collierville	TN	38017
82	615	S Collierville-Arlington Rd	Donald & Margaret Bittle	615 S Collierville-Arlington Road	Collierville	TN	38017
83	670	S Collierville-Arlington Rd	Carolyn Billings	670 S Collierville-Arlington Road	Collierville	TN	38017
84	685	S Collierville-Arlington Rd	Jon and Gayla Wilkinson	685 S Collierville-Arlington Road	Collierville	TN	38017
85	710	S Collierville-Arlington Rd	Robert & Donna Buckner	710 S Collierville-Arlington Road	Collierville	TN	38017
86	745	S Collierville-Arlington Rd	Bill & Joan Cowan	745 S Collierville-Arlington Road	Collierville	TN	38017
87	800	S Collierville-Arlington Rd	Frank Fant	800 S Collierville-Arlington Road	Collierville	TN	38017
88	826	S Collierville-Arlington Rd	Red Sea L.L.C.	826 S Collierville-Arlington Road	Collierville	TN	38017
89	853	S Collierville-Arlington Rd	Mark & Christen Norris	853 S Collierville-Arlington Road	Collierville	TN	38017
90	854	S Collierville-Arlington Rd	John & Virginia Livingston	854 S Collierville-Arlington Road	Collierville	TN	38017
91	890	S Collierville-Arlington Rd	Clark & Beth Smeltzer	890 S Collierville-Arlington Road	Collierville	TN	38017
92	913	S Collierville-Arlington Rd	Bessie Coulter	913 S Collierville-Arlington Road	Collierville	TN	38017
93	D022300138	S Collierville-Arlington Rd	Alex III and J Martin Regan Jr. Barzizza	7625 Appling Center Drive	Memphis	TN	38133
94	D022300101	S Collierville-Arlington Rd	Alex III and J Martin Regan Jr. Barzizza	7625 Appling Center Drive	Memphis	TN	38133
95	D022300099	S Collierville-Arlington Rd	Alex III and Sarah Barzizza	7625 Appling Center Drive	Memphis	TN	38133
96	D022300183	S Collierville-Arlington Rd	Mark S. Norris	853 S Collierville-Arlington Road	Collierville	TN	38017
97	D022300145	S Collierville-Arlington Rd	Mark and Christen Norris	853 S Collierville-Arlington Road	Collierville	TN	38017
98	D022300089	S Collierville-Arlington Rd	Todd and Corinne Derenburger	152 McDonald Glenn Cove	Collierville	TN	38017
99	D022300091	S Collierville-Arlington Rd	Malcolm and Sharon Vega	9861 Garden Place	Germantown	TN	38139
100	D022300112	Raleigh-LaGrange Road	Randy and Joyce Smith	3486 Manor Grove Cove	Collierville	TN	38017
101	D0223EA00006	Fox Lair Drive	Peter & Belinda Buie	10579 Cambrooke Cove	Collierville	TN	38017
102	D022300043	Collierville-Arlington Road	Frank Fant III	800 Collierville-Arlington Road	Collierville	TN	38017

K:\Projects\2006\06-128 Cotton Creek\_Drawings\dwg\Properties\CottonCreek\042436-04\_LowPressSewSys.dwg, 24x36, 02/12/2008 1:52:23 PM, AFRAM Corporation

This schematic diagram is strictly to be used for conceptualization purposes and is not to be construed to be considered as a designed system. The actual locations of the existing septic tanks are not shown to be accurate. They are just representative to show the concept of the design, not for accuracy purposes.



## 06-128 Cotton Creek Sewer Study

Shelby County Contract #CA074509

NO.	DATE

FILE NAME:  
CottonCreek\042436-04\_LowPressSewSys.dwg

DATE:  
02/12/08

DRAWN: KWC  
CHECKED: KWC

SHEET TITLE:  
C1.1  
Cotton Creek  
Subdivision

SCALE:  
1"=3000'

SHEET NO.:  
1

OF 1



## SANITARY SEWER DEVELOPMENT CONTRACT

THIS SANITARY SEWER DEVELOPMENT CONTRACT ("Contract") is made effective the 27<sup>th</sup> day of August, 2004 (the "Effective Date"), by and between the Town of Collierville, a municipality organized and existing under the laws of the State of Tennessee (the "Town") and Spring Creek, L.L.C., a Tennessee limited liability company, Trail Partners, LLC, a Tennessee limited liability company, and SCRC Golf Course Land, LLC, a Tennessee limited liability company (collectively the "Developer" and the "Owner").

### W I T N E S S E T H:

WHEREAS, the Developer is the owner of a tract of land zoned "AG", which contains approximately seven hundred eighty (780) acres and the Developer desires to improve and develop said property into a development to be known as **SPRING CREEK RANCH PLANNED DEVELOPMENT** whose case number is PD-306CO and Spring Creek Golf Course pursuant to Shelby County Special Use Permit No. SUP97-222CO (hereinafter collectively referred to as the "P.D."); and

WHEREAS, the Developer gained approval to develop the P.D. through the Shelby County Office of Planning and Development and the Shelby County Commission; and

WHEREAS, the P.D. is located within the annexation reserve boundary of the Town; and

WHEREAS, the Town has agreed to allow sanitary sewer flow from the P.D. to be treated at the Town's Shelton Road Wastewater Treatment Plant; and

WHEREAS, the Developer is required to design and install all necessary sanitary sewer improvements in connection with the P.D., as such improvements are described herein and as defined hereinbelow as the Sewer Improvements, to collect and transport wastewater from the individual structures within the P.D. to the Town's existing sewer collection system; and

WHEREAS, the Town is willing to enter into this Contract with the Developer relative to the Sewer Improvements and the Town is willing to provide sewer services to the owners of residences and business establishments to be constructed in the P.D. in accordance with the Town's standard policies and applicable rates; and

WHEREAS, the Town is willing to approve this Contract subject to the Developer's compliance with applicable existing laws, ordinances, and regulations and the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties herein contained, it is understood and agreed as follows:

### DEFINITIONS

1. The following words and phrases, when used in this Contract, shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

- a. **"Codes"** shall mean (i) the Collierville Construction Specifications; (ii) the Collierville Subdivision Regulations, and (iii) other applicable Codes and Ordinances of the Town. Items (i) through (iii) are hereby made a part of this Contract by reference. References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.
- b. **"Construction"** shall mean (i) the permanent fastening and positioning of construction materials and/or (ii) extensive grading (including demolishing or removing existing structures necessary for the development of the P.D.).
- c. **"Final Acceptance"** shall mean and be evidenced by the final release of the Security by the Board of Mayor and Aldermen for each particular phase of the P.D., which release shall be contingent upon an inspection by the Town Engineer or his designee of the Primary System and the Secondary System, respectively, pursuant to which no defects or failures are found and the concurrence of the Board of Mayor and Aldermen with such findings of the Town Engineer or his designee.
- d. **"Primary System"** shall mean an appropriately sized sewer force main to be installed by the Developer to run southwardly along the right-of-way line of Collierville-Arlington Road and tie into the Town's sewer system at an existing sanitary sewer manhole north of the Shelton Road intersection, together with the major pump station to be installed by the Developer to serve the sewer flow from the Secondary System (as hereinafter defined). Further, if, within seven (7) years of the first operation of the Sewer Improvements (as hereinafter defined), odor control facilities become needed due to persistent noxious odors emanating from the aforesaid sewer lines and/or pump station, such facilities shall be installed by the Developer not to exceed Forty Thousand and No/100 Dollars (\$40,000.00) and same are included within the term "Primary System".
- e. **"Project"** shall mean the design and installation of the Sewer Improvements (as defined hereinbelow).
- f. **"Project Site"** shall mean the locations where the Developer is to install the Sewer Improvements and shall include the P.D. and the residences and business establishments to be constructed in the P.D., excluding, in all cases, the house service line from and including the cleanout to the residences or business establishments to be served with sewer.
- g. **"Secondary System"** shall mean the system to be installed by the Developer to provide sewer service for all properties permitted to be developed in the P.D. that are not served by individual septic tanks. Upon completion of its construction, the Secondary System shall then tie into the Primary System.
- h. **"Security"** shall mean: (i) with respect to the Primary System, a letter of credit, the amount of which shall be Twenty Thousand and No/100 Dollars (\$20,000.00); and (ii) with respect to the Secondary System, a letter of credit in the total amount of Ten Thousand and No/100 Dollars (\$10,000.00) per phase. Said letters of credit shall have an

expiration date of one (1) year but automatically renewable for successive one (1) year periods unless the issuer gives the Town notice, in writing, within ninety (90) days prior to its expiration date, at which time the Town can draw up to the full face value of said letters of credit, and said letters of credit shall provide that the physical presence of a representative of the Town shall not be required for presentation and that litigation regarding same shall be held in a court in Shelby County, Tennessee.

- i. **"Sewer Development Fee"** shall mean the combination of the "Sewer Treatment Plant Construction and Maintenance Fee" and the "Interceptor Sewer Basin Fee" as such fees are adopted by and subject to standard adjustment by annual resolution of the Board of Mayor and Aldermen of the Town for all residential developments.
- j. **"Sewer Improvements"** shall mean individually and collectively, as the context indicates, the Primary System and the Secondary System; provided, however, that the term "Sewer Improvements" shall not include the house service line running to and from the service lateral, but shall include the tap point and service laterals which connect the sewer mains in the streets in the P.D. to the house service lines.
- k. **"Substantial Completion"** shall mean when the Developer has completed all required Sewer Improvements relative to the P.D. phase under construction, but prior to Final Acceptance.

## **GENERAL CONDITIONS**

- 2. Approval of Plans. The Developer shall obtain the approval of the Town Engineer and Development Director for the Sewer Improvements prior to the start of construction of any portion thereof.
- 3. General Construction Standards.
  - a. The Developer shall construct the Sewer Improvements in accordance with the approved sewer construction plans and in accordance with the applicable requirements for sanitary sewer construction contained in the Codes. References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.
  - b. The definition of Sewer Improvements provides that if, within seven (7) years of the first operation of the Sewer Improvements, odor control facilities become needed due to persistent noxious odors emanating therefrom, the Developer will expend not more than Forty Thousand and No/100 Dollars (\$40,000.00) for design and to install such facilities. The Town will give the Developer notice of the need for construction of such facilities and the Developer will commence installation thereof within ninety (90) days and complete same within one hundred eighty (180) days from the date of commencement. The obligation to install such odor control system shall be secured by the Security then posted by the Developer hereunder.

- c. The laws and regulations of the State of Tennessee shall at all times be complied with by the Developer and the Town relative to their respective obligations under this Contract. To the extent that the approval of Shelby County, Tennessee may be required relative to the subject matter of this Contract, the Developer shall be required to secure such approval.

4. Specific Criteria Applicable to the Installation of the Sewer Improvements.

- a. Subject to the limitations contained in this Section 4.a., the parties hereby agree that the Sewer Improvements shall be sized and utilized only for the P.D. Due to the inherent difficulties of tying into either of the force main systems contemplated as a part of the Sewer Improvements, the parties hereby further agree that the sole exception to the limitation that the Sewer Improvements shall be utilized only for the P.D. shall be that, in the event the Town, after annexation of areas north of the Wolf River, experiences a failing septic system, the Town could, at the Town's own expense and without unreasonable interruption of the service to the P.D., tie into the Sewer Improvements. Nothing contained herein shall preclude the Town from recovering such expense from the owner of the property to be served by tying into the Sewer Improvements.
- b. As appropriate, the Town will assist the Developer in making arrangements with the Tennessee Department of Transportation (TDOT) and coordinating the extensions of the sewer lines installed in connection with the Sewer Improvements with TDOT; provided, however, that any such assistance provided by the Town shall be done at no expense to the Town; and provided further, that the Developer assumes sole responsibility for all expenses incurred by the Town in obtaining any easements over private property that may be required in connection with the installation of the Sewer Improvements. If an easement for the Sewer Improvements is necessary over private property, the Town agrees to exercise its right of eminent domain to obtain, at Developer's expense, an easement over and across the land necessary to complete the Sewer Improvements.
- c. The Town hereby agrees to reserve sewer capacity for a maximum of 520 lots within the P.D., which is the number of lots presently permitted within the P.D. The Town will allow a maximum of 300 lots to be tied into the Town's sewer system within eighteen (18) months after the construction of the Primary System. The balance of the 520 lots, or 220 lots, could be tied into the Town's sewer system via the Sewer Improvements at any time after the completion of initial eighteen (18) month period described hereinabove.
- d. The Developer will pay all costs associated with the Sewer Improvements and hereby agrees to relinquish ownership of the Sewer Improvements to the Town without charge upon Final Acceptance by the Town, which Final Acceptance shall be granted as segments of the Sewer Improvements satisfy the criteria herein for Final Acceptance. The Town, upon its acceptance of the Sewer Improvements, will accept responsibility for the maintenance and operation of the Sewer Improvements.
- e. The Developer hereby agrees that it will grant to the Town an easement for all Sewer Improvements located within the P.D. prior to Final Acceptance. At no time, shall the Town be responsible for any settlement or subsidence of any streets or property in the

P.D. except such that occurs in connection with maintenance, repair, or inspection of the Sewer Improvements by the Town; provided further that the Town's responsibility for maintenance extends only to the Sewer Improvements and not beyond the service laterals. The Town shall not be responsible for maintenance of the cleanouts, which will connect the house service lines to the service laterals. The Town shall be responsible for repairing any damage to streets occasioned by its need to maintain the Sewer Improvements. All cleanouts shall be installed by the permit holders.

- f. Building permits for individual lots will not be sought until acceptance by the Town of the Sewer Improvements serving said lot.
5. The Developer shall also construct the Sewer Improvements in accordance with the applicable standards of the following, which are also made a part of this Contract by reference:
- (a) American Society for Testing Materials (ASTM);
  - (b) Occupational Safety and Health Administration (OSHA);
  - (c) Americans with Disabilities Act (ADA);
  - (d) Tennessee Department of Transportation (TDOT);
  - (e) American National Standards Institute (ANSI);

all as are in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.

## **OWNERSHIP**

6. The Developer agrees it shall have no claim, direct or implied, in the title or ownership of the Sewer Improvements specified in this Contract that are to be dedicated or conveyed to the Town for perpetual maintenance by the Town following Final Acceptance. The Town, upon Final Acceptance, will take full title to the Sewer Improvements. Maintenance responsibilities of the Developer after Substantial Completion and prior to Final Acceptance are provided for hereinafter.
7. Restrictions on Transfer.
- a. Until all obligations of the Developer under this Contract have been fully met, the Developer agrees that neither the P.D. nor any portion thereof, except for individual lots or parcels sold to others for use, will be transferred without first providing the Town with notice of when the proposed transfer is to occur and who the proposed transferee is, along with the appropriate address and telephone number of the proposed transferee.
  - b. If it is the proposed transferee's intention to develop the P.D. or any portion thereof in accordance with this Contract, the Developer agrees to furnish the Town with an

assumption agreement by which the transferee agrees to perform the obligations required under this Contract that are applicable to the property to be acquired by the transferee. Unless otherwise agreed by the Town, the Developer will not be released from any of its obligations hereunder by virtue of such transfer and the Developer and the transferee both shall be jointly and severally liable to the Town following such transfer for all obligations hereunder that are applicable to the property transferred. Said assumption agreement will be subject to the approval of the Town Attorney.

- c. If the Developer and the transferee intend to enter into an assumption agreement whereby the Developer is released from its obligations under this Contract, the Developer must present the assumption agreement to the Town for consideration and approval by the Board of Mayor and Aldermen. In the event of such approval, the transferee will be required to furnish new Security acceptable to the Town.
  - d. If it is not the proposed transferee's intention to develop the P.D. or any portion thereof in accordance with this Contract, the transferee must satisfy all applicable requirements of all governments having jurisdiction, including review by and approval of all appropriate Boards and Commissions.
  - e. The Developer understands that if it transfers the P.D. or any portion thereof without providing the notice of transfer and assumption agreement as required herein, it will be in breach of this Contract and the Town may require that all work be stopped relative to this Contract.
8. The Developer agrees to furnish, on demand, satisfactory evidence that it has the lawful right to enter into this Contract for the purposes herein contained. Any Security for the Developer's obligations hereunder is subject to the approval of the Town Attorney.
9. Duration of Obligations. The obligations of the Developer hereunder shall run with the land until the Developer's obligations have been fully met. Any party taking title to the P.D., or any part thereof, shall take said real property subject to such obligations.

## SECURITY

10. The Developer will furnish to the Town, not later than the date of the Developer's application for approval of any phase of the P.D. by Shelby County, the Security as defined hereinabove.
11. After Substantial Completion, if there is any necessity to amend the approved sewer construction plans reflecting the as-built improvements, the Developer shall prepare such amendment, obtain the approval of the Town Engineer and the Development Director of the Town and pay any additional fees associated therewith. Upon application of the Developer and approval of the Board of Mayor and Aldermen of the Town, the amount of the Security may be reduced to the cost, as estimated by the Town, of uncompleted requirements relative to the Primary System or the Secondary System, respectively, plus a reasonable sum to cover Developer's warranty obligations hereunder.
12. Although the amount of the Security may be less than the total cost of compliance by Developer with all of Developer's obligations hereunder, it is understood and agreed that the



Security, subject to its limit, is to furnish security for the performance of all of the Developer's obligations hereunder but that such obligations are not limited by the amount of such Security. The Security shall remain in force through the date of Final Acceptance, although same may be reduced from time to time as provided herein. All collection expenses, court costs and attorney's fees incurred by the Town in connection with collection under the Security shall be paid by the Developer and such obligation shall be secured by the Security. The Town may charge a reasonable administrative fee in connection with collecting under the Security. If the Town performs any of the Developer's obligations under the Contract, the Town shall be entitled to recover the cost thereof plus interest thereon of ten percent (10%) per annum until reimbursed.

13. The form and substance of any Security shall be subject to the approval of the Town Attorney. The Security shall be attached as an addendum to this Contract guaranteeing, to the extent of the Security, the faithful performance of this Contract by the Developer.

### INSURANCE

14. The Developer shall purchase and maintain comprehensive general liability and other insurance that shall insure against claims arising out of the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose acts any of them may be liable, including, without limitation:
  - a. Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the P.D. to furnish evidence of such insurance for the employees of same;
  - b. Claims for the personal injury, occupational illness or death of the Developer's employees, if any;
  - c. Claims for the personal injury, illness or death of any person other than the Developer's employees or agents;
  - d. Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;
  - e. Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle; and,
  - f. Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this Contract.
15. The insurance coverage required herein shall include the coverage specified above with policy limits of not less than \$1,000,000 Combined Single Limit general liability and \$500,000 Combined Single Limit automobile liability per occurrence. The comprehensive general liability insurance coverage shall include completed operations insurance coverage

and liability insurance applicable to the Developer's obligations under this Contract. Each insurance policy shall contain a provision stating that the insurer will give the Town thirty (30) days prior written notice of its intent to cancel or materially change the policy. All such insurance shall remain in effect until the Town issues its written notice of Final Acceptance and release of Security of the completed Contract. In addition, the Developer shall maintain completed operations insurance for at least one (1) year after the Town issues its written notice of Final Acceptance and release of Security. The Developer shall furnish the Town with evidence of the continuation of all such insurance at the time of issuance of the notice of Final Acceptance and release of Security.

16. Prior to the Effective Date, the Developer will furnish to the Town a certificate of insurance evidencing the required coverages.
17. The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify the Town in accordance with the provisions of this Contract.

#### **TIME SCHEDULE**

18. Intentionally Deleted.
19. The Developer must pay all fees, furnish the Security, and provide the required certificate of insurance on or before, as applicable, the commencement of construction of the Primary System and the approval for each phase of the P.D., all in accordance with the applicable provisions of this Contract.
20. The failure of the Developer to commence Construction of the Primary System within one (1) year of the Effective Date may result in the approval of the Board of Mayor and Aldermen being withdrawn.
21. The Developer shall substantially complete each phase of the P.D. on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than twenty-four (24) months from the approval date for each phase of the P.D.
  - a. The Developer agrees that if due to unforeseen circumstances it is unable to complete all work included in this Contract within the time specified herein, it will submit a written request for extension of the Contract period to the Town at least sixty (60) days prior to the expiration of the existing Contract period, specifying the reason for its failure to complete the work as agreed, and a prospective date for such completion.
  - b. The Developer agrees that if the Security furnished to secure the obligations of the Developer under this Contract, due to inflation and/or rising costs, previous errors in estimation, or otherwise, is inadequate to secure such obligations at the time an extension of time is sought, it will provide additional security to bring the Security amount in line with current cost projections made by the Town Engineer.
  - c. The Town will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the Town and provided the required additional Security, if any is needed.

22. The Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Contract. The Developer agrees that should it fail to complete any part of the work outlined in this Contract in a good and workmanlike manner, as approved by the Town Engineer, the Town shall reserve the right to withhold and/or withdraw additional sewer service within the P.D. until all items of this Contract have been fulfilled by the Developer.
23. The Developer shall provide the Town with a copy of the final construction plans for the Sewer Improvements using State Plane Coordinate System with NAD - 83 datum on disk or CD in DXF format (AutoCAD Release 14 or more current) prior to Final Acceptance of the Sewer Improvements for each phase of the P.D. All MTEXT must be exploded.
24. The Developer shall furnish to the Town as-built plans, on a reproducible, stable media, which plans shall show the sanitary sewer, storm drainage system, grading, water main and service lines and streets within the P.D. and from the P.D. to the point of terminus of the Sewer Improvements before the Town shall issue Final Acceptance for the phase for which Final Acceptance is sought. In addition to the plans furnished on reproducible media, the Developer shall provide a scanned copy of the as-built plans as a TIF image on CD and a DXF copy (AutoCAD Release 14 or more current) of the as-built plans on CD.
25. The Developer shall also furnish, in writing, the itemized as-built construction cost of all public improvements prior to Final Acceptance of any phase of the P.D.

#### **WARRANTY**

26. The Developer is required to complete the Sewer Improvements, which are ultimately to be accepted by the Town for perpetual maintenance, and all other improvements required by the Town relative to the P.D., in accordance with the terms of this Contract. Further, the Developer is to correct any defects or failures in all of such improvements that occur within one (1) year of the Substantial Completion date for each phase of the P.D. Any defect first appearing within the applicable one (1) year period shall be corrected by the Developer; and thereafter the Developer shall correct any defect again occurring in or relating to what was previously corrected within a one (1) year period commencing from the date of approval by the Town Engineer of such correction. If the defect reoccurs within any one (1) year of its repair, the Developer shall remain obligated to correct it until the condition is satisfactory to the Town after one (1) year from the date of its last repair.
27. No sooner than one year after the Substantial Completion date for each phase of the P.D., the Developer shall so notify the Town Engineer, and the Town Engineer, or his designee, shall inspect the required Sewer Improvements to determine any defects or failures of the same. If no defects or failures are found, the Town Engineer shall report the same to the Board of Mayor and Aldermen at a regular or special meeting within thirty (30) days of the date of request of said inspection, unless utilizing due diligence longer time is necessary. The Board of Mayor and Aldermen, provided it agrees with the Town Engineer, shall approve the final release of the Security for the Primary System or, as the case may be, that particular P.D. phase, which shall constitute Final Acceptance of said phase. If defects or failures are found as a result of the aforesaid inspection, a written notification outlining deficiencies to be

corrected shall be provided to the Developer along with the time period for corrections, not to exceed sixty (60) days. Within seven (7) days of notification by the Developer that such corrections have been made or the expiration of the time period, whichever occurs first, the Town Engineer shall re-inspect for correction of defects and failures. If all deficiencies have not been corrected, the Town Engineer shall provide an updated written notification of deficiencies and the Developer shall have thirty (30) days to make the remaining corrections. If all corrections are not made at this time, the Town may demand payment on the Security, and, upon collection, shall proceed to make the corrections. If and when the Developer or the Town, as the case may be, has corrected all failures and defects, and a period of one (1) year has expired from the date of such corrections without defects again appearing in the corrected work, the Town Engineer shall report the same to the Board of Mayor and Aldermen at a regular or special meeting within thirty (30) days of the date of said re-inspection. The Board of Mayor and Aldermen, provided it agrees with the Town Engineer, shall approve the final release of the Security, which shall constitute Final Acceptance of the Sewer Improvements associated with that particular P.D. phase.

28. It is the intention of the parties hereto that any Sewer Improvements required of the Developer relative to the P.D. which was found to be satisfactory by the Town Engineer upon inspection as provided in Section 27 shall thereafter be the obligation of the Town to maintain. However, any such Sewer Improvements found to be unsatisfactory by the Town Engineer upon the initial inspection as provided in Section 27 or any later inspection made pursuant to Section 27 shall not be obligation of the Town to maintain until same remains satisfactory to the Town for a period of one (1) year from the date it was inspected and found to be satisfactory by the Town Engineer.
29. At any time following one (1) year from the date of the Substantial Completion for the Primary System or secondary system for each phase of P.D. development, as the case may be, the Town Engineer may recommend to the Board of Mayor and Aldermen that a portion of the Security be released based upon the Town Engineer's estimation of the needed Security to ensure that funds will be available to correct any then outstanding defects in the Sewer Improvements or to correct any defects which have been corrected but may reoccur.

#### **REQUIRED IMPROVEMENTS AND RELATED FEES**

30. The Developer shall pay the Town a "Pump Station Maintenance Fee", which amount is based upon a fee of \$15,000.00 per lift station or the applicable fee at the time of approval for each of the lift stations associated with the Primary System and the Secondary System, respectively. The Developer shall pay this Pump Station Maintenance Fee at the time the plan for each lift station is approved by the Town.
31. In addition to the Pump Station Maintenance Fee described in this Contract in the immediately foregoing paragraph, the Developer shall pay the Town the Sewer Development Fee, which the Town shall assess on a per-lot basis for single family residences and which fee shall not exceed an initial amount of \$1,500.00 per lot. The fee for any business establishment shall be based on a residential lot equivalent computed in accordance with the Town's usual practices. The Developer agrees to pay the Sewer Development Fee to the

Town as the Developer makes application to Shelby County for approval of each phase of the P.D. and in advance of any construction in any phase of the P.D.

32. It is the intention hereof that the Sewer Improvements shall constitute a State of Tennessee-approved outfall sewage system complete with necessary sewer mains, manholes, and service laterals in the Project and pump stations and force mains as approved by the Town Engineer upon approval of the plans and specifications for the Project. The Developer shall bear the entire cost thereof.
33. The Developer agrees to bear the cost of all engineering, inspection and laboratory testing costs procured by the Developer incidental to the sewer service in or to the Development; provided, however, that the Town reserves the right to inspect all such testing; and, provided further that if the Town deems it necessary to have additional work of such nature performed, the Developer will bear such costs.

#### **ADMINISTRATIVE FEES TO BE PAID PRIOR TO THE EXECUTION OF THIS CONTRACT**

##### **Plans Review Fees**

34. The Developer agrees to pay to the Town the sum of \$100 base fee plus \$ 25 per lot utilizing the Sewer Improvements, which represents the development plans review fee. Such fee shall be paid before commencement of each respective phase of the P.D. Plans review fees are subject to adjustment by the Board of Mayor and Alderman by Resolution.

##### **Development Inspection Fee**

35. The Developer agrees to pay to the Town the sum of \$250 base fee plus \$50 per lot utilizing the Sewer Improvements, which sum represents the development inspection fee. Such fee shall be paid before commencement of each respective phase of the P.D. Neither observations by the Town Engineer and Construction Inspectors, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with the terms of this Contract. Inspection fees are subject to adjustment by the Board of Mayor and Alderman by Resolution.

##### **Development Agreement Preparation Fee**

36. The Developer agrees to pay to the Town the sum of **One Thousand Five Hundred and no/100 Dollars (\$1,500.00)**, which sum represents the development agreement preparation fee, which shall be paid prior to the execution of this Contract.

#### **OTHER ADMINISTRATIVE FEES TO BE PAID AS APPLICABLE**

37. The Developer agrees to pay to the Town the sum of **Two Hundred and Fifty Dollars (\$250)**, which sum represents the fee for any modifications to this Contract, including, but not limited to, time extensions, addendums, amendments and the like. The Developer shall pay the Contract modification fee for each modification prior to the execution of any document prepared in connection with a modification to this Contract.

## MISCELLANEOUS CONDITIONS

38. The Developer agrees that it will grant the necessary easements and rights-of-way across its property necessary to effectuate the requirements of this Contract, without expense to the Town of Collierville and will waive any claim for damages. Any off-site easements and/or rights-of-way owned by others but required for the Project must be obtained and recorded prior to Contract execution or contract assignment.
39. It is understood and agreed that the Town is not and could not be expected to oversee, supervise and/or direct the construction of all construction and improvements contemplated hereunder. Neither is the Town Engineer vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The Town Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the development improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property. In providing technical assistance, plan and design review, the Town does not and shall not relieve the Developer from or accept any liability from the Developer. The Developer will provide his own Project Engineer whose duties and responsibilities are explained in the General Conditions of the Town of Collierville Construction Specifications.
40. In emergencies affecting the safety or protection of persons or the work or property at the Project Site or adjacent thereto, the Developer, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury or loss. If the Town has to use its resources in an emergency affecting the Development, it is agreed that the Town will keep a record of costs associated therewith and will be reimbursed by Developer.
41. The Developer agrees that the Town shall have the right to enter the Project Site and make emergency repairs to any improvements when the health and safety of the general public requires it. The Developer will reimburse the Town for the reasonable cost incurred by it in making such repairs.
42. Prior to Final Acceptance of each phase of the Sewer Improvements by the Town, the Developer shall deliver to the Town an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the improvements required under this Contract have been paid in full. The Developer shall also provide a release of all liens, and of the right to claim liens, from all sub-contractors and material suppliers furnishing labor or materials for the development.
43. The Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the P.D. and the installation of the Sewer Improvements, both on and off site.



44. Indemnity. The Developer will indemnify and hold the Town harmless against all claims that may arise out of or result from the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by either of them. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the Town in defending itself as a result of the aforesaid and/or enforcing this Contract.
45. Safety. The Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Project Site during construction. All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the Town, and the Town deems it necessary to clean the affected streets, the Developer agrees to reimburse the Town for all such cleaning expenses.
46. The use of the neuter pronoun herein shall include the neuter and both genders as the context shall require.
47. If litigation ensues with respect to this Contract and the Town prevails therein, the Town shall be entitled to recover from the Developer its reasonable attorney's fees and the costs and expenses of such litigation, including same related to any appeal. The court(s) before which such litigation is pending shall determine whether the Town prevailed and the amount of such fees, costs, and expenses to be recovered by the Town as a result of prevailing; and, if the Town prevails in part, but not in whole, an equitable award of its attorney's fees and expenses shall be made by the court(s). The same provision as immediately aforesaid shall be applicable to any litigation necessary to establish the Town's right to recover under the Security. The Security shall cover all of the Developer's obligations under this Contract, including, without limitation, the obligation of the Developer to pay the fees, costs and expenses of the Town as provided for in this Section of the Contract.
48. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this contract. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
49. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each

respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

50. No Waiver. The failure of the Town to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

51. Amendments and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

52. Authority to Execute. Town and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the Town and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

53. Notices. All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

a. To: TOWN  
Town of Collierville  
Attn: Town Engineer  
500 Poplar View Parkway  
Collierville, Tennessee 38017  
Telephone: 901.457.2340  
Fax: 901.457.2354  
With Required Copy To:  
Director of Development  
At same address and fax number as above.

b. To: DEVELOPER  
Attn.: Steve Dunavant  
5100 Poplar Avenue, 30<sup>th</sup> Floor  
Memphis, Tennessee 38137  
Telephone: 901-767-9024  
Fax: 901-685-5585

Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier

shall be deemed given for all purposes under this Agreement when delivered to the intended address.

54. Any party to this Contract may change such party's address for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

55. Choice of Law. This Contract is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

56. Overall Fee Summary. See Exhibit "A" attached hereto.

57. Supplemental Conditions/Additional Requirements.

N/A

58. Joinder of Owner. In the event that the Developer is not the owner of the Project Site, the owner joins in this Contract and by the owner's execution of this Contract the owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities as expressly set forth in this Contract.

WITNESS the due execution hereof.

TOWN OF COLLIERVILLE

By: Linda Kerley  
Linda Kerley, Mayor

Date: August 27, 2004

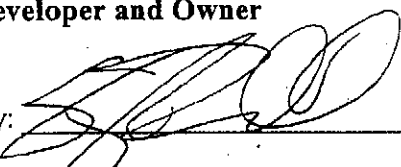
ATTEST:

By: Lynn Carmack  
Town Clerk/Recorder

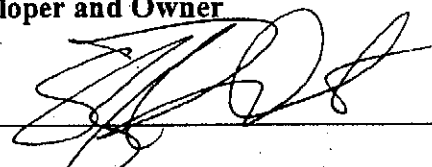
APPROVED AS TO FORM AND  
CONTENT

Shawn Carter  
Town Attorney

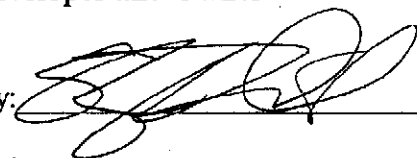
**SPRING CREEK, L.L.C.,**  
**Developer and Owner**

By:   
Title: CHIEF MANAGER  
Date<sup>1</sup>: 9/23/04

**TRAIL PARTNERS, LLC,**  
**Developer and Owner**

By:   
Title: CHIEF MANAGER  
Date<sup>1</sup>: 9/23/04

**SCRC GOLF COURSE LAND, LLC,**  
**Developer and Owner**

By:   
Title: CHIEF MANAGER  
Date<sup>1</sup>: 9/23/04

<sup>1</sup> The Effective Date hereof shall be the date upon which the last to sign of the Mayor and Developer (and Owner, if applicable) executes this Contract, which date shall be entered on the first page hereof.

## EXHIBIT A

### SPRING CREEK RANCH SANITARY SEWER OVERALL FEE SUMMARY

	Phase I	Phase II 8 Lots	Golf House & Cabins Phase	Phase III
<b>Pump Station Maintenance Fee</b> \$15,000/station (subject to adjustment)	N/A	\$30,000.00		
<b>Sewer Development Fee</b> \$1,500/lot (subject to adjustment)	N/A	\$12,000.00		
<b>Plans Review Fee</b> \$100 base fee + \$25/lot	N/A	\$300.00		
<b>Development Construction Inspection Fee</b> \$250 base fee + \$50/lot	N/A	\$650.00		
<b>Development Agreement Preparation Fee</b>	N/A	\$1,500.00		
<b>Development Agreement Modification Fee</b>	N/A	N/A		
<b>Total per Phase</b>	<b>\$0.00</b>	<b>\$44,450.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Item # \_\_\_\_\_

Prepared by: Darren Sanders  
Engineering

Approved by \_\_\_\_\_  
County Attorney

**A RESOLUTION APPROVING AN AMENDMENT TO THE CONTRACT WITH AFRAM CORPORATION IN THE AMOUNT OF \$133,112.20 FOR THE DESIGN OF A LOW PRESSURE SEWER SYSTEM IN THE COTTON CREEK AREA AND THIS ITEM REQUIRES AN EXPENDITURE OF COUNTY CIP FUNDS IN THE AMOUNT OF \$133,112.20. SPONSORED BY COMMISSIONER WYATT BUNKER.**

---

**WHEREAS,** The AFRAM Corporation has been commissioned to perform an independent engineering study of the Cotton Creek area and develop alternative solutions based on their findings; and

**WHEREAS,** The engineering study confirmed the existence of widespread septic system failures due to low soil permeability rates and saturated conditions; and

**WHEREAS,** The most efficient and cost effective system recommended by the consultant is a low pressure sewer system (LPSS) that collects the solid material in the septic tanks and conveys the liquid waste through the Spring Creek Ranch development collection system to the Town of Collierville Publicly Owned Treatment Works (POTW); and

**WHEREAS,** Approval of this amendment to the AFRAM contract, CA#074509, is contingent on the approval of the agreement with the Stanford Group to allow the wastewater to be transported through the Spring Creek Ranch sewer system and the agreement with the Town of Collierville to treat the liquid waste; and

**WHEREAS,** The AFRAM Corporation was selected by the Consultant Review Committee under RFP #07-007-04 to provide professional services; and

**WHEREAS,** AFRAM is a certified locally owned small business (LOSB) in Shelby County; and

**WHEREAS,** AFRAM has submitted a contract to design the sewer system in the amount of \$133,112.20; and

**WHEREAS,** It is necessary to appropriate funds in the amount of \$133,112.20 to fund this contract amendment.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That the contract amendment with AFRAM Corporation in the amount of \$133,112.20 for the design of the Cotton Creek Area Sewer is hereby approved.

**BE IT FURTHER RESOLVED,** That the Mayor is hereby authorized to execute the aforementioned contract amendment on behalf of Shelby County Government, an executed copy of which is to be placed on file in the Contracts Administration Section of the Office of the County Attorney.

**BE IT FURTHER RESOLVED,** That funds are hereby appropriated in the amount of \$133,112.20 from the FY 2008-2009 CIP Budget for CIP Project No. 100106, Cotton Creek Sewer System.

**BE IT FURTHER RESOLVED,** That the Mayor and the Director of Administration and Finance are hereby authorized to issue their warrant or warrants in amounts not to exceed \$133,112.20 for the purposes contained in this resolution to AFRAM Corporation and to take proper credit in their accounting therefore.



\_\_\_\_\_  
A C Wharton, Jr., Mayor

Date\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the County Commission

ADOPTED \_\_\_\_\_

**SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET**

Referred to Commission Committee Public Works

For Commission Action on \_\_\_\_\_

**DESCRIPTION OF ITEM:**

**A RESOLUTION APPROVING AN AMENDMENT TO THE CONTRACT  
WITH AFRAM CORPORATION IN THE AMOUNT OF \$133,112.20 FOR THE  
DESIGN OF A LOW PRESSURE SEWER SYSTEM IN THE COTTON  
CREEK AREA AND THIS ITEM REQUIRES AN EXPENDITURE OF  
COUNTY CIP FUNDS IN THE AMOUNT OF \$133,112.20. SPONSORED BY  
COMMISSIONER WYATT BUNKER.**

**CHECK ALL THAT APPLY BELOW:**

\_\_\_\_\_ This Action does NOT require expenditure of funds.

  X   This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_; County CIP Funds: \$ 133,112.20

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** Engineering

**APPROVAL:**

Dept. Head: Michael E. Oakes, P.E. – (901) 545-4332 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Elected Official: Commissioner Wyatt Bunker - (901) 545-4301 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Division Director: Ted Fox - (901) 545-4565 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: Jim Huntzicker – (901) 545-4514 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Finance Dept. Mike Swift – (901) 545-4449 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

County Attorney: Pam Skelton – (901) 545-4362 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: Jim Huntzicker – (901) 545-4514 \ \_\_\_\_\_ \ \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)



## SUMMARY SHEET

### I. Description of Item

This item approves an amendment to the contract with the AFRAM Corporation for the design of a low pressure sewer system in the Cotton Creek Area and appropriates funds in the amount of \$133,112.20 from the FY 2008-09 CIP Budget.

### II. Source and Amount of Funding

#### A. Amount Expended/Budget Line Item

#### FY 2008-2009 CIP BUDGET FOR PROJECT NO. 100106, COTTON CREEK

Original Allocation	\$ 1,200,000.00
Request in Companion Resolution (Spring Creek Reimbursement)	< 98,400.00 >
Balance	\$ 1,101,600.00
This Request	\$ 133,112.20
Balance	\$ 968,487.80

#### B. All Costs (Direct/Indirect)

1. Consultant's fee – \$200,235.36 (\$67,113.16 appropriated in FY 06-07 for study)

#### C. Additional or Subsequent Obligations or Expenses of Shelby County

1. Estimated construction costs - \$950,000
2. Spring Creek Ranch, LLC capital costs reimbursement - \$98,400.00
3. Spring Creek Ranch, LLC pro-rata share of up to \$40,000.00 odor abatement liability

### III. Contract Items

- A. Type of Contract: Standard  
B. Terms: 8 months

### IV. Additional Information Relevant to approval of this item

In response to residents' reports of septic systems failing, Shelby County administered an area wide survey encompassing ninety-two (92) homes to acquire preliminary estimates of affected properties. Evaluation of the survey results led to the hiring of the AFRAM Corporation, a locally owned small business and wholly owned minority firm, to perform a detailed engineering study with recommended alternatives. The consultant's analysis of the area confirmed widespread existence of failing septic systems due to poor soil conditions, high ground water levels, and perched water.

AFRAM has evaluated potential system designs and has recommended a low pressure sewer system (LPSS) as the most efficient and cost effective solution. The LPSS will utilize the existing septic tanks for solids removal and convey the liquid waste to the Town of Collierville treatment plant on Shelton Road. Shelby County will enter into an agreement with Collierville for sewer connection and treatment costs that will be paid by the individual homeowners. In order to satisfy the provisions of the Collierville agreement and their municipal regulations, one-hundred percent (100%) of the residents will be required to sign-on and participate in the sewer system. The County will also have an agreement with the Stanford Group, owners of the Spring Creek Ranch development, to transport the liquid waste through their collection system. Both of these agreements are companion items to this resolution. Funding in the amount of approximately \$1.1 M has been provided in the FY 09 Budget to design and construct the system.

**Amendment No. 1 Agreement  
To Contract #CA074509  
Between  
AFRAM Corporation  
And Shelby County Government**

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between Shelby County Government (hereinafter "County") and AFRAM Corporation (hereinafter "CONSULTANT").

WHEREAS, the parties previously entered into an agreement (hereinafter "Agreement") dated November 9, 2006 for study and design of the Cotton Creek Area Sewer

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Section II of the Agreement entitled TERM AND COMPENSATION is hereby amended as shown the attached Attachment "A", attached hereto and incorporated fully herein by reference and the and the compensation is hereby amended as follows:

Original Contract Amount:	\$67,113.16
Additional Fee in this Amendment	<u>133,112.20</u>
Revised Contract Amount	<u>\$200,255.36</u>
2. The terms and conditions of the original Agreement, except as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the \_\_\_\_\_ day of \_\_\_\_\_ 2008

APPROVED AS TO FORM  
AND LEGALITY:

SHELBY COUNTY GOVERNMENT

\_\_\_\_\_  
Contract Administrator  
Assistant County Attorney

\_\_\_\_\_  
A C WHARTON, JR., MAYOR

AFRAM CORPORATION

By: Hermit Clinton

Title: Project Manager

CORPORATE ACKNOWLEDGMENT

STATE OF TENNESSEE

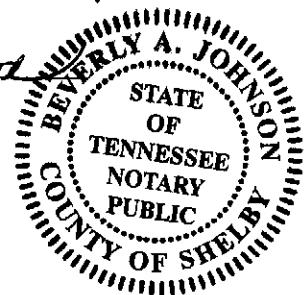
COUNTY OF Shelby County Government

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Hermit Clinton, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the AFRAM Corporation the within named bargainor, a corporation, and that he as such Project Manager, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as Project Manager

WITNESS my hand and official seal at office this 10 day of January 2008.

Beverly A. Johnson  
Notary Public

My Commission Expires: January 16, 2011







- Program/Construction Management
- Cost Estimating/CPM Scheduling
- Engineering Design Services

January 8, 2008

Shelby County Engineering Department  
Attn: Mr. Michael Oakes, P.E., County Engineer  
160 North Main Street  
Memphis, TN 38103

**RE: Cotton Creek Area Sewer Study – Phase III Fee Proposal**  
**Shelby County Contract # CA074509**  
**AFRAM Corporation Project No. 06-128**

Dear Mr. Oakes,

Enclosed please find our fee proposal for Phase III (Design Services) for the above referenced project.

We greatly appreciate the opportunity of serving Shelby County on this important project.

Should you have any questions please do not hesitate to contact me at 543-1116.

Sincerely,

**AFRAM Corporation**

A handwritten signature in cursive script that reads "Kermit Clinton".

Kermit Clinton, P.E.  
Project Manager

CC: S. Akinduro, K. Chandler, Project File- 06-128



- Program/Construction Management
- Cost Estimating/CPM Scheduling
- Engineering Design Services

**Cotton Creek Area Sanitary Sewer  
Shelby County Contract No. CA074509  
Fee Proposal - Phase III**

**Project Understanding**

The Cotton Creek area of Shelby County is located in the southeast quadrant of the intersection of Collierville-Arlington and Raleigh-Lagrange Roads in east Shelby County within the Town of Collierville's annexation reserve area. The named developments within the Cotton Creek Area are Kirkwood Estates, Cotton Creek Subdivision and Fox Hollow Farms (Phases I & 2). Also included are individual lots along Raleigh-Lagrange and Collierville-Arlington Roads. There are a total of 91 residential lots included in this project. This area is currently served by standard septic systems. Through the years the residents have experienced varying degrees of problems with their septic systems. The purpose of this project is as follows:

**Phase I** – Analyze extent of reported problems and assess alternatives based on targeting the lots with known problems.

This portion of the project is complete (Please see Phase I Engineer's Report dated February 24, 2007). The results of Phase I indicated the problems are widespread throughout the Cotton Creek Area. Also, a high water table coupled with poor soils in the area dictated that targeting individual lots was not feasible.

**Phase II** – Determine and rank the various physical and fiscal issues related to installation of either a local collection and treatment system such as STEP/STEG Re-circulation Sand Filter or collection via conventional gravity/pressure system with conveyance of effluent to the Shelton Road Wastewater Treatment Plant in Collierville.

This portion of the project is complete (please see Phase II Engineer's Report dated March 29, 2007). As recommended in the Engineer's Report, Shelby County contacted Town of Collierville officials and the Spring Creek Ranch developers to discuss the alternatives. Somewhat favorable comments from the involved parties prompted Shelby County to recommend the Low Pressure Collection System which will convey "grey water" from septic tanks to the existing Spring Creek Ranch Force Main with treatment at the Shelton Road Wastewater Treatment Plant in Collierville. This alternative is referred to as the Low Pressure System in the Phase II Engineer's Report.

**Phase III** – Engineering Design Services related to the chosen alternative.

As stated in Shelby County Contract No. CA074509, upon completion of Phases I and II, Phase III (Design Services related to the chosen alternative) is to be negotiated at that time. We are pleased to provide you with the Phase III Fee Proposal. We propose the following tasks for design of the chosen alternative: **Low Pressure System.**

**Shelby County Contract No. CA074509**  
**Phase III Fee Proposal**  
**January 8, 2008**  
**Page Two**

- |     |  |                   |
|-----|--|-------------------|
| a). | Up to 3 meetings each with Town of Collierville and Spring Creek Ranch Developers (6 total) as needed  | \$4,290.00        |
| b). | Existing Septic Tank Inspections (includes cleaning and engineering) (for 91 lots/homes)   | \$49,910.00       |
| c). | Field Surveying  | \$33,300.00       |
| d). | Prepare Construction Documents and Specifications  | \$39,771.80       |
| e). | Assist Shelby County in Permitting Process (includes submitting paperwork/plan set for TDEC review and approval; does not include review fees. We do not anticipate disturbing an area greater than 1 acre in size. Therefore, this item does not include cost for SWPPP preparation.) | \$2,510.40        |
| f). | Project Administration   | <u>\$3,330.00</u> |

**Total Design Fee** **\$133,112.20**

We appreciate the opportunity to provide Shelby County with design services for this important sewer project. The calculated amount of time needed to complete the above referenced items is approximately 8 months.

Thank you and please let me know if you have any questions, comments or need additional information.

Sincerely,

**AFRAM Corporation**



Kermit Clinton, P.E.  
Project Manager

Cc: Solomon Akinduro, Ken Chandler (AFRAM)

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/28/2007PRODUCER (314) 721-1372 FAX (314) 721-2979  
Adrian N. Baker & Co.  
8301 Maryland Avenue  
P. O. Box 66871  
St. Louis, MO 63166-6871

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## INSURERS AFFORDING COVERAGE

NAIC #

INSURED  
AFRAM Corporation  
1601 Olive  
St Louis, MO 63103INSURER A: Mt. Hawley Insurance Co. SWETT IL  
INSURER B: First National Ins Co-America Hartford  
INSURER C: New Hampshire Insurance AIG  
INSURER D: Transportation Insurance Co. CNA  
INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X		GENERAL LIABILITY	MGL 0149682	05/09/2007	05/09/2008	EACH OCCURRENCE \$ 1,000,000
			<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
			<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
			GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$ 1,000,000
B			AUTOMOBILE LIABILITY	25 CC 103393 2	06/01/2007	06/01/2008	GENERAL AGGREGATE \$ 2,000,000
			<input checked="" type="checkbox"/> ANY AUTO				PRODUCTS - COMP/OP AGG \$ 2,000,000
			<input type="checkbox"/> ALL OWNED AUTOS				
			<input type="checkbox"/> SCHEDULED AUTOS				
			<input checked="" type="checkbox"/> HIRED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
			<input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$
			<input checked="" type="checkbox"/> UM \$1,000,000				BODILY INJURY (Per accident) \$
			<input checked="" type="checkbox"/> UIM \$1,000,000				PROPERTY DAMAGE (Per accident) \$
			GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
			<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
							AUTO ONLY: AGG \$
A	X		EXCESS/UMBRELLA LIABILITY	MXL 0366267	05/09/2007	05/09/2008	EACH OCCURRENCE \$ 2,000,000
			<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 2,000,000
			<input type="checkbox"/> DEDUCTIBLE				Prods/Completed \$ 2,000,000
			<input checked="" type="checkbox"/> RETENTION \$ 0				
C			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC 307-26-64	06/01/2007	06/01/2008	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER
			ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1,000,000
			If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D			OTHER	MCH 25 404 62 06	11/18/2007	11/18/2008	\$2,000,000 Annual Per Claim
			Prof Liab Engineers, Tech, & Planning Consultants				\$2,000,000 Annual Aggregate Deductible \$50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RFP # 07-007-04 Sewer Feasibility Study/Recommendations Design for the Cotton Creek Area  
Shelby County Government is added as an Additional Insured to the Commercial General Liability regarding the contract with the Named Insured.

## CERTIFICATE HOLDER

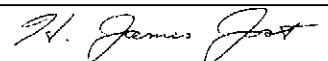
Shelby County Government  
Purchasing Department  
160 N. Main, Suite 550  
Memphis, TN 38103

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

H. James Jost, CIC/EMT



**GRATUITY DISCLOSURE FORM****Shelby County Ethics Commission**

**INSTRUCTIONS:** This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.

- Affram Cooperator*
1. **NAME**  
*N/A*
  2. **DATE OF GRATUITY**  
*N/A*
  3. **NATURE AND PURPOSE OF THE GRATUITY**  
*N/A*
  4. **NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY**  
*N/A*
  5. **NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**  
*N/A*
  6. **ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**  
*N/A*



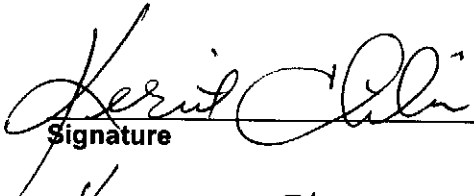
7. DESCRIPTION OF THE GRATUITY

N/A

8. COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)

N/A

9. The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.

  
Signature

KERMIT CLINTON  
Print Name

8/Jan/2008  
Date

*A copy of your completed form will be placed on the Shelby County Internet website.*



ITEM # \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

COMMISSIONER: RITZ

APPROVED BY: \_\_\_\_\_  
COUNTY ATTORNEY

**Resolution encouraging all entities with the power to issue PILOT benefits to annually report to the Shelby County Board of Commissioners on their actions taken and dates thereof concerning PILOT expirations.  
Sponsored by Commissioner Mike Ritz.**

---

WHEREAS, That the County Commission has previously authorized several entities to issue payment in lieu of tax (PILOT) incentives to qualified applicants; and

WHEREAS, That the County Commission has been informed that these PILOT issuing entities must take certain affirmative actions upon the expiration of PILOT and/or the failure of a PILOT grantee to meet their covenants and conditions for approval; and

WHEREAS, The County Commission expects that all entities with the power to issue PILOT benefits will institute policies and procedures to always move promptly to take the affirmation actions necessary for PILOT expirations.

NOW THEREFORE BE IT RESOLVED By the Shelby County Board of Commissioners That all entities with the power to issue PILOT benefits are requested to report annually the action(s) taken, reasons for expiration(s), and date(s) thereof for each and every PILOT expiration(s) with the first such annual report to be within ninety (90) days of the adoption of this resolution.

BE IT FURTHER RESOLVED That this resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it.

\_\_\_\_\_  
AC Wharton, County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## SHELBY COUNTY BOARD OF COMMISSIONERS AGENDA ROUTE SHEET

Referred to Commission Committee Community Services

For Commission Action on July 21, 2008

## DESCRIPTION OF ITEM:

A RESOLUTION approving the fourth addendum to a lease agreement between L & P Building owner, LLC and Delta Commission on Aging d/b/a Aging Commission of the Mid-South to provide office space on the 10<sup>th</sup> and 9<sup>th</sup> floors at 2670 Union Avenue Extended, Memphis, TN 38112 from July 1, 2008 – June 30, 2009 and which requires expenditure of state grant funds in the amount \$104,676.48 and federal grant funds in the amount of \$74,257.68. Sponsored by Commissioner Joyce Avery.

**CHECK ALL THAT APPLY BELOW:**

\_\_\_\_\_ This Action does NOT require expenditure of funds.

  X   This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$\_\_\_\_\_ ; County CIP Funds- \$\_\_\_\_\_

State Grant Funds: \$ 104,676.48 ; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ 74,257.68

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** Aging Commission of the Mid-South

**APPROVAL:**

Dept. Head: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

Elected Official: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

Division Director: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

CIP – A&F Director: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

Finance Dept. \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

County Attorney: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

CAO/Mayor: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

ITEM NO: \_\_\_\_\_

PREPARED BY:           K. WILLIAMS          

APPROVED BY: \_\_\_\_\_

A RESOLUTION approving the fourth addendum to a lease agreement between L & P Building owner, LLC and Delta Commission on Aging d/b/a Aging Commission of the Mid-South to provide office space on the 10th and 9th floors at 2670 Union Avenue Extended, Memphis, TN 38112 from July 1, 2008 – June 30, 2009 and which requires expenditure of state grant funds in the amount \$104,676.48 and federal grant funds in the amount of \$74,257.68. Sponsored by Commissioner Joyce Avery.

---

**WHEREAS**, the City of Memphis by ordinance and Shelby County by resolution, established the Delta Commission on Aging which has formally changed it's name to the Aging Commission of the Mid-South by County resolution; and

**WHEREAS**, the Aging Commission of the Mid-South administered by the Shelby County Division of Community Services has been located at 2670 Union Avenue Extended for the past 12 years; and

**WHEREAS**, the Aging Commission of the Mid-South is desirous of expanding the premises by 1,069 rentable square feet for a total of 11,141 rentable square feet; and

**WHEREAS**, the cost of lease of said property is \$14,911.18 per month, of which includes the base rent (\$13,229.94) and operating escalations (\$1,681.24); and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That the County Mayor is hereby authorized to execute any and all documents necessary to the intent of the resolution, executed copies of which shall be placed on file in the Purchasing Department.

**BE IT FURTHER RESOLVED**, That the Fourth Addendum of Lease Agreement with L & P Building Owner, LLC for the lease of office space for the Aging Commission of the Mid-South is hereby amended as per Exhibit A (Fourth Addendum), Exhibit B (Suite 1000) and Exhibit C (Suite 915), which are attached hereto and incorporated hereinto by this reference as if fully set forth herein.

**BE IT FURTHER RESOLVED**, That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants to the extent of appropriations made in this resolution, and to take proper credit in their accounting therefore.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## SUMMARY SHEET

### **I. Description of Item**

This resolution amends the current lease agreement to include 1,069 square feet of additional space on the 9<sup>th</sup> floor. This space will be utilized to facilitate the single point of entry philosophy by increasing our call center to accommodate the anticipated calls of clients desiring to participate in any long term care program.

### **II. Source and Amount of Funding**

Amounts Expended by Line Item in the following fund/org/acct per approved budget:

410-481736-6798	\$50,400
410-481742-6798	\$8,400
410-481751-6798	\$16,800
585-481702-6798	\$16,800
585-481742-6798	\$33,600
585-481764-6798	\$57,000

All costs: Direct Costs. No matching funds are required for this contract.

### **III. Contract Items**

Terms - 07/01/08 – 06/30/09

### **IV. Additional Information Relevant to Approval of this Item**

The Administration recommends approval of this Resolution.

\*\*\*AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED\*\*\*

DATE \_\_\_\_\_

#### FOURTH ADDENDUM OF LEASE AGREEMENT

This FOURTH ADDENDUM OF LEASE AGREEMENT ("FOURTH Addendum") is made on June 1, 2008, between L & P Building Owner, LLC ("Landlord"), and Delta Commission on Aging d/b/a Aging Commission of the Mid-South ("Tenant"), whose address is 2670 Union Avenue Extended, Suite # 1000, Memphis, TN 38112.

#### RECITALS

This Fourth Addendum is based upon the following recitals:

- A. Landlord and Tenant entered into a Lease dated May 1, 1996, and having a lease expiration date of June 30, 2006, which includes multiple Addendums and Exhibits, (collectively the "Lease Agreement").
- B. Landlord and Tenant desire to amend the Lease as amended to further expand the Premises, and otherwise amend the Lease accordingly.
- C. Tenant currently leases 10,072 rentable square feet.

THEREFORE, in consideration of the mutual covenants and agreements stated in the Lease and for other sufficient considerations received and acknowledged by each party, Landlord and Tenant agree to amend the Lease as follows:

- 1. RECITALS. All recitals are fully incorporated.
- 2. EXPANSION SPACE. The Tenant desires to expand the premises by 1,069 rentable square feet ("Expansion Space"). The premises are described in the attached Exhibit "C".
- 3. BASE RENT. Base Rent and the Base Rent Adjustment for the entire 11,141 rentable square feet shall be as follows:
 

	<u>Monthly Rent</u>	<u>Annual Rent</u>
July 1, 2008 – June 30, 2009	\$13,229.94	\$158,759.25
- 4. IMPROVEMENTS TO THE PREMISES. Tenant shall accept the Premises in it's "as-is" condition except Landlord will demolish one wall if the Tenant elects to do so.
- 5. CONFLICTING PROVISIONS. If any provisions of this Fourth Addendum conflict with any of those of the Lease, then the provisions of this Fourth Addendum shall govern.
- 6. REMAINING LEASE PROVISIONS. Except as stated in this Fourth Addendum, all other viable and applicable provisions of the Lease shall remain unchanged and continue in full force and effect throughout the Lease Term.
- 7. BINDING EFFECT. Landlord and Tenant ratify and confirm the Lease and agree that this Fourth Addendum shall bind and inure to the benefit of the parties, and their respective successors, assigns and representatives as of the dated first stated.



AFFIRMING THE ABOVE, the parties have executed the FOURTH ADDENDUM OF LEASE AGREEMENT on the date first stated.

WITNESS

Kathy J. Williams

Kathy Davis

\_\_\_\_\_

\_\_\_\_\_

TENANT: Delta Commission on Aging  
d/b/a Aging Commission of the Mid-South

BY: Dora Ivey  
Dora Ivey, Executive Director

Date: 6/1/08

BY: Rhea Taylor  
Rhea Taylor, Chairman

Date: 6/16/08

BY: \_\_\_\_\_  
A C Wharton, Jr., Mayor

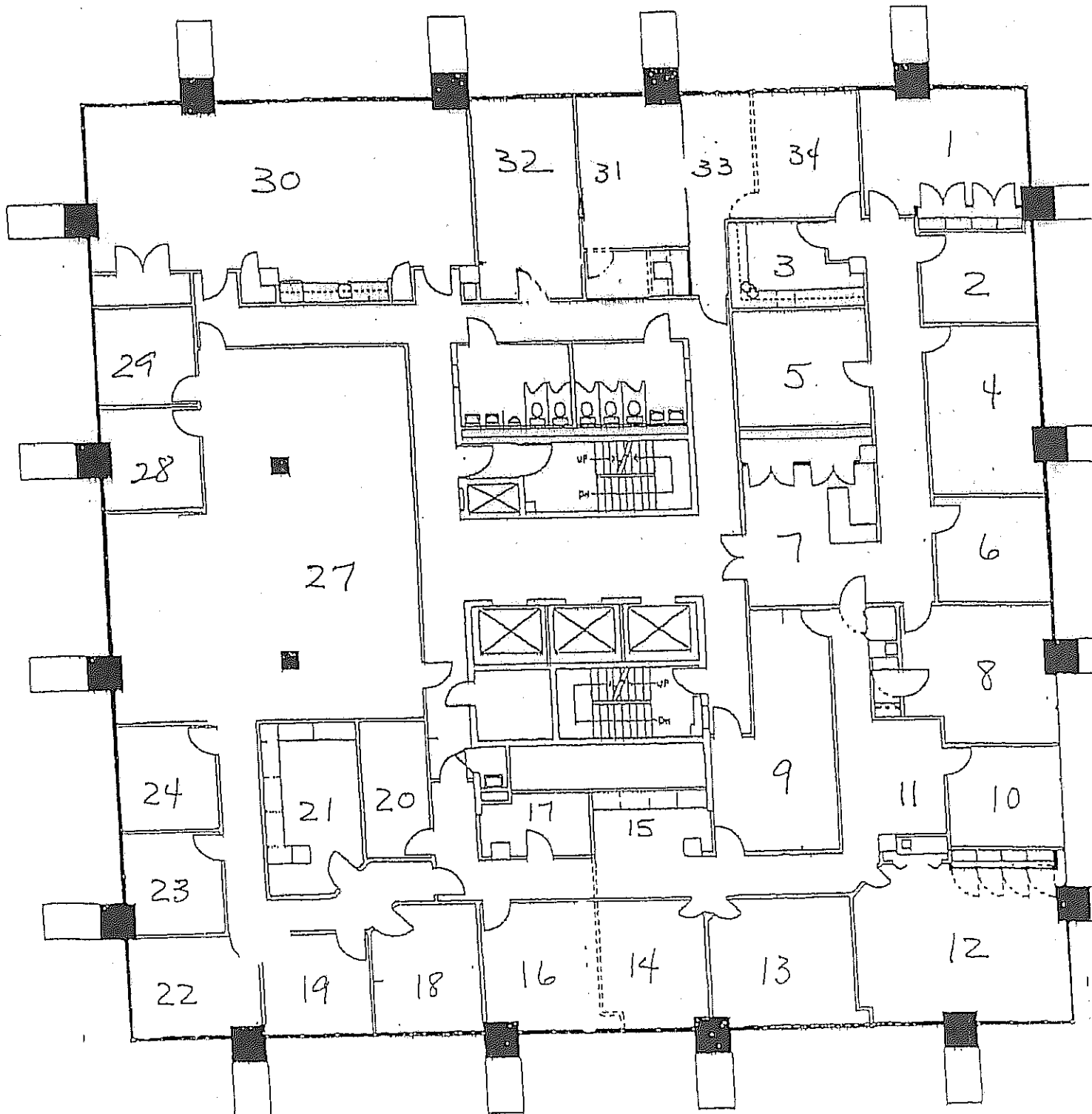
Date: \_\_\_\_\_

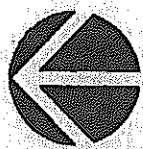
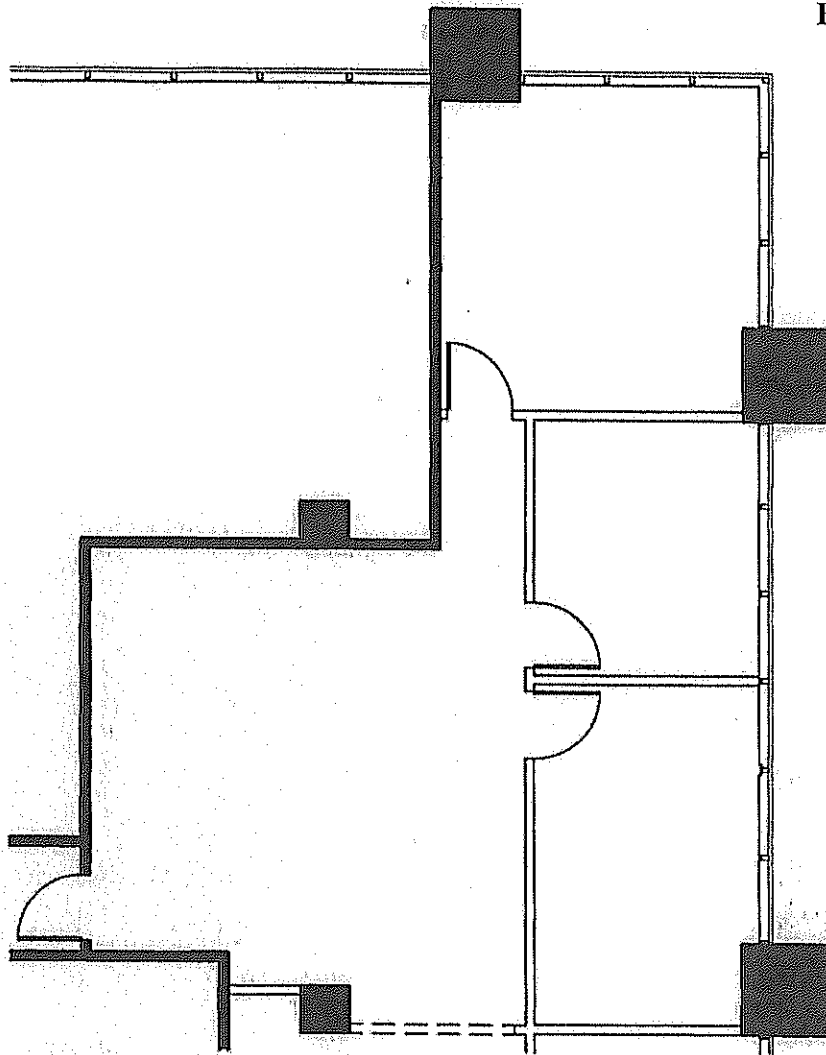
LANDLORD:  
L & P Building Owner, LLC

BY: \_\_\_\_\_  
Dennis Udwin  
President

Date: \_\_\_\_\_

Exhibit B  
Suite 1000





1

# FLOOR PLAN

SCALE: 1/8"=1'-0"  
1,069 R.S.F.

**SUITE 915**

Lipscomb & Pitts Building  
**In-Rel**

PROJECT NO. 98048

DATE 03/03/08

**BD**

**THE CRUMP FIRM, INC.**  
ARCHITECTS-PLANNERS  
INTERIOR DESIGNERS  
81 MONROE BUILDING  
MEMPHIS, TENNESSEE 38103  
(901) 525-7744 FAX (901) 525-9918

Item # \_\_\_\_\_

Prepared by: Andrew C. Pegues, Jr.

Sponsored by: \_\_\_\_\_

Approved by: \_\_\_\_\_  
County Attorney

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**A RESOLUTION amending the FY09 budget in the amount of \$84,022 to allow maximum expenditure of funds from the Shelby County Community Services Agency Tornado Emergency funds. This item requires expenditure of funds donated to the general fund in the amount of \$84,022. Sponsored by Commissioner George Flinn.**

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WHEREAS, Resolution #20, adopted February 25, 2008, by the Board of County Commissioners, approved the receipt of donated funds for the Shelby County Community Services Agency Tornado Emergency funds program; and

WHEREAS, The Shelby County Community Services Agency received \$300,842 in donations for the Tornado Emergency fund for the period beginning February 25, 2008 and ending June 30, 2008; and

WHEREAS, A balance of \$84,022.00 remained in the Tornado Emergency fund at the end of FY08 and Shelby County Community Services Agency believes that these funds should be available for emergency expenditures from July 1, 2008 through June 30, 2009; and

WHEREAS, A budget amendment of \$84,022.00 is necessary to restore the balance of funds remaining on June 30, 2008; and

WHEREAS, All costs of this program have been reimbursed by the private donors.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY TENNESSEE, That the Shelby County Community Services Agency Tornado Emergency funds program budget is amended and appropriated per Exhibit A, which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute any and all documents necessary to comply with the intent of this resolution.

BE IT FURTHER RESOLVED, That the County Mayor and the Director of Administration and Finance be and are hereby authorized to issue their warrant or warrants in amounts not to exceed \$84,022.00 for the Shelby County Community Services Agency Tornado Emergency funds program pursuant to the terms and conditions of said contract and to take proper credit in their accounting therefore.

\_\_\_\_\_  
A C Wharton, Jr.  
County Mayor

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## SUMMARY SHEET

### I. DESCRIPTION OF ITEM:

A RESOLUTION amending the FY09 budget in the amount of \$84,022 to allow maximum expenditure of funds from the Shelby County Community Services Agency Tornado Emergency funds operating budget.

The Shelby County Commission adopted Resolution #20 on February 25, 2008 approving the receipt of donated funds for the Shelby County Community Services Agency Tornado Emergency funds program. Over \$300,000 in donations was received from February 25, 2008 to June 30, 2008. Emergency assistance in the form of food vouchers, utility/mortgage/rent assistance was provided to 472 families. A balance of \$84,022.00 remained in the Tornado Emergency fund at the end of FY08 and Shelby County Community Services Agency would like for these funds to be available for emergency expenditures from July 1, 2008 through June 30, 2009.

### II. SOURCE AND AMOUNT OF FUNDING:

#### A. Amount Expended/Budget Line-Item

\$84,022.00

B. All Costs (Direct/Indirect) Direct Costs Indicated on Resolution Exhibit A.  
No Indirect Costs. All Costs to be Borne by the donor.

#### C. Additional or Subsequent Obligations or Expenses of Shelby County

None

### III. CONTRACT ITEMS:

Donations cover administrative expenses, and direct services costs for the Shelby County Community Services Agency Tornado Emergency funds Program. The period covered is July 1, 2008 through June 30, 2008.

### IV. ADDITIONAL INFORMATION RELEVANT TO APPROVAL OF THIS ITEM:

The Shelby County Community Services Agency Tornado Emergency funds Program is administered by the Community Services Agency (CSA) under the Division of Community Services. This program was established after the tornado struck Shelby County on February 5, 2008 resulting in a trail of destruction and left hundreds of victims suffering from the aftermath of the storm. The balance of \$84,022.00 budgeted in fiscal year 2009 will help to continue to provide needed resources to citizens. The Administration recommends approval of this resolution.

COMMUNITY SERVICE AGENCY  
TORNADO EMERGENCY FUND  
FY 2008/2009

FUND  
699

ACCT#	ACCOUNT NAME	CURRENT BUDGET	AMENDMENT	REQUESTED BUDGET
*****	*****	*****	*****	*****
480213	CSA – Tornado Emergency Fund			
4259	PRIVATE DONOR GRANTS	0.00	(84,022.00)	(84,022.00)
		-----	-----	-----
6422	EMERGENCY SERVICES	0.00	84,022.00	84,022.00
	TOTAL REVENUES	0.00	(84,022.00)	(84,022.00)
		-----	-----	-----
	TOTAL EXPENDITURES	0.00	84,022.00	84,022.00

CA094604

**SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET**

Referred to Commission Committee Community Services

For Commission Action on July 21 2008

**RESOLUTION AMENDING THE CONTRACT BETWEEN THE EXCHANGE CLUB FAMILY CENTER OF MEMPHIS AND SHELBY COUNTY GOVERNMENT IN THE AMOUNT OF \$100,000.00 FOR THE PROVISION OF DOMESTIC VIOLENCE ASSESSMENT SERVICES FOR THE PERIOD JULY 1, 2008 THROUGH JUNE 30, 2009. THIS ITEM REQUIRES EXPENDITURE OF GENERAL FUNDS IN THE AMOUNT OF \$100,000.00. SPONSORED BY COMMISSIONER GEORGE FLINN.**

**CHECK ALL THAT APPLY BELOW:**

\_\_\_\_\_ This Action does NOT require expenditure of funds.

X This item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ 100,000.00; County CIP Funds: \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_;

Other funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** \_\_\_\_\_ Division of Community Services

**APPROVAL:**

Dept. Head: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Type or print your name & phone #) (Initials) (Date)

Elected Official: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Type or print your name & phone #) (Initials) (Date)

Division Director: Dottie Jones 545-4576 / DL / 06/30/08  
(Type or print your name & phone #) (Initials) (Date)

CIP - A&F Director: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Type or print your name & phone #) (Initials) (Date)

Finance Dept.: Mike Swift 545-4264 / MS / 7/1/08  
(Type or print your name & phone #) (Initials) (Date)

County Attorney: K. Johnson / KJ / 6/30/08  
(Type or print your name & phone #) (Initials) (Date)

CAO/Mayor: JAMES HUNTZICKER / JH / 6/30/08  
(Type or print your name & phone #) (Initials) (Date)



## SUMMARY SHEET

### I. Description of Item

This Resolution approves amendment of the contract in the amount of \$100,000 between the Exchange Club Family Center of Memphis and Shelby County Government for the provision of domestic violence assessment services for the period July 1, 2008 through June 30, 2009. This item requires expenditure of general funds in the amount of \$100,000.00

### II. Source and Amount of Funding

\$100,000.00

### III. Contract Items

A. Type of Contract: Assessment services for Domestic Violence Offenders

B. Terms: Budget period 07/01/08 through 06/30/09

### IV. Additional Information Relevant to Approval of this Item

The Administration recommends approval of this Resolution.

ITEM # \_\_\_\_\_

PREPARED BY: DONNA PAVATTE

APPROVED BY: [Signature]

**RESOLUTION AMENDING THE CONTRACT BETWEEN THE EXCHANGE CLUB FAMILY CENTER OF MEMPHIS AND SHELBY COUNTY GOVERNMENT IN THE AMOUNT OF \$100,000.00 FOR THE PROVISION OF DOMESTIC VIOLENCE ASSESSMENT SERVICES FOR THE PERIOD JULY 1, 2008 THROUGH JUNE 30, 2009. THIS ITEM REQUIRES EXPENDITURE OF GENERAL FUNDS IN THE AMOUNT OF \$100,000.00 SPONSORED BY COMMISSIONER GEORGE FLINN.**

**WHEREAS,** There is a need for the provision of professional services for psychological assessments of domestic violence offenders as referred by the courts; and

**WHEREAS,** The County issued RFP #08-007-02 on July 6, 2007, received two responses and awarded the RFP to the Exchange Club Family Center of Memphis on September 6, 2007; and

**WHEREAS,** The County desires at this time to amend said contract with the Exchange Club Family Center of Memphis by extending it for a one (1) year period from July 1, 2008 through June 30, 2009 (Exhibit A) for the provision of assessment services as ordered by the court for domestic violence offenders; and

**WHEREAS,** Funds in the amount of \$100,000.00 are available in FY 2008/2009 Operating Budget Account No. 010-481101-6637, Pretrial, Professional Services for appropriation for assessment services for domestic violence offenders.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That the contract between the Exchange Club Family Center of Memphis and Shelby County Government in the amount of \$100,000.00 for the provision of domestic violence assessment services for the period July 1, 2008 through June 30, 2009 be approved.

**BE IT FURTHER RESOLVED,** That the Mayor is authorized to amend and to execute any and all documents necessary to accomplish this goal.

**BE IT FURTHER RESOLVED,** That the County Mayor and the Director of Administration and Finance are authorized to issue warrant or warrants in an amount not to exceed \$100,000.00 to the Exchange Club Family Center of Memphis for the purposes contained in this resolution and to take proper credit in their accounting therefore.

\_\_\_\_\_  
A C Wharton, Jr., Mayor

Date: \_\_\_\_\_

ATTEST:

CONTRACT AND ENCUMBRANCE INFORMATION SHEET

\*\*\*AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED\*\*\*

THIS SHEET MUST BE COMPLETED, SIGNED BY THE DEPARTMENT HEAD AND DIVISION DIRECTOR AND ATTACHED TO ALL CONTRACT AND RESOLUTION PACKETS BEFORE ANY ACTION WILL BE TAKEN.

1. Department Requesting Services: Division of Community Services
2. Preparer's Name, Telephone #, and E-Mail Address:  
Donna Pavatte 545-4274 donna.pavatte@shelbycountyttn.gov
3. DESCRIPTION OF ITEM TO BE PURCHASED, BUILT, OR SERVICE TO BE PROVIDED:  
Professional services for psychological assessments of domestic violence offenders as referred by courts.
4. NAME, ADDRESS, VENDOR NUMBER, AND EOC NUMBER OF VENDOR/CONSULTANT/AGENCY WITH WHICH SHELBY COUNTY WILL BE CONTRACTING:  
The Exchange Club Family Life Center  
2180 Union Avenue  
Memphis, TN 38104  
VENDOR NO. 01287  
EOC NO.
5. COST OF ITEM OR SERVICE REQUESTED: \$100,000
6. TERM OF PROPOSED CONTRACT/AGREEMENT: July 1, 2008 thru June 30, 2009
7. FUND, ORG, AND ACCOUNT NUMBER (13 DIGITS) \*\*FOR MULTIPLE ACCOUNTS, PLEASE SPECIFY DOLLAR AMOUNT FOR EACH\*\*  
010-481101-6637
8. COMMODITY CODE:
9. VENDOR/CONSULTANT/AGENCY SELECTED BY (CHECK ONE):  
\*\*PLEASE ATTACH APPROVAL DOCUMENTS\*\*  
a. ☐ Bid/RFP Process - # & Date  
b. ☐ Emergency/Sole Source
10. LOSB/MBE INFORMATION: Please check the appropriate description  
☐ MBE (MINORITY OWNED BUSINESS ENTERPRISE)  
☐ MALE ☐ FEMALE  
☐ WBE (WOMEN OWNED BUSINESS ENTERPRISE)  
☐ LOSB (LOCALLY OWNED SMALL BUSINESS)  
ANNUAL SALES DOES NOT EXCEED \$3 MILLION  
☐ N/A
11. SPECIAL INSTRUCTIONS (ROUTING, FUNDING, BUDGET TRANSFER IN PROCESS)

REVIEWED AND APPROVED BY:

ELECTED OFFICIAL

DEPARTMENT HEAD

DATE

DIVISION DIRECTOR

DATE

CONTRACT ADMINISTRATION

JUN 26 AM 11:54

RECEIVED



## **Amendment to Agreement**

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this \_\_\_\_\_ day of July 2008, by and between Shelby County Government (hereafter "County") and The Exchange Club Family Center of Memphis (hereafter "Contractor").

WHEREAS, the parties previously entered into an agreement (hereinafter "Agreement") dated September 4, 2007, for professional services for assessment of domestic violence offenders as referred by courts within Shelby County; and

WHEREAS, the parties now desire to enter into this Amendment to renew the Agreement for the period July 1, 2008 to June 30, 2009 pursuant to the Agreement which is attached as Exhibit "A".

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this agreement and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. The Agreement between the parties is hereby renewed for a one (1) year period beginning July 1, 2008 through June 30, 2009.
2. The total cost for this renewal period shall not exceed ONE HUNDRED THOUSAND and 00/100 Dollars (\$100,000.00) payable in accordance with the terms of the Agreement.
3. This Amendment shall be subject to and contingent upon adoption of the Fiscal Year 2008-2009 Operating Budget of Shelby County Government by the Board of County Commissioners and approval of the cost for this Amendment within said Operating Budget.
4. The terms and conditions of the original Agreement, except as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**APPROVED AS TO FORM  
AND LEGALITY:**

**SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_  
Contract Administrator  
Assistant County Attorney

\_\_\_\_\_  
A C WHARTON, JR, MAYOR

**The Exchange Club Family Center**

By: Barbara C. King  
Title: Executive Director

CORPORATE ACKNOWLEDGMENT

STATE OF TENNESSEE

COUNTY OF Shelby County Government

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath acknowledged himself/herself to be \_\_\_\_\_ or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_, the within named bargainer, a corporation, and that he/she as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

WITNESS my hand and official seal at office this 19 day of June, 2008.

Tonya R. Golatt  
Notary Public

My Commission Expires:



Exh. b. t A

## CONTRACT

This contract (the "Contract") entered into this \_\_\_\_\_ day of September, 2007, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and THE EXCHANGE CLUB FAMILY CENTER OF MEMPHIS, hereinafter referred to as "CONTRACTOR".

### WITNESSETH

**WHEREAS**, the COUNTY has the need for the provision of professional services for assessment of domestic violence offenders as referred by courts within Shelby County; and

**WHEREAS**, the COUNTY issued a Request for Proposals ("RFP") Number 08-007-02, Assessment Services for Domestic Violence Offenders, and CONTRACTOR responded to said RFP on July 24, 2007; and

**WHEREAS**, the CONTRACTOR has the knowledge and expertise to provide such services; and

**WHEREAS**, the COUNTY awarded the RFP to CONTRACTOR on September 6, 2007; and

**WHEREAS**, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONTRACTOR will provide said services.

**NOW THEREFORE**, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

#### **I. SCOPE OF WORK**

1. The CONTRACTOR shall provide the services as outlined within the COUNTY's RFP Number 08-007-02 and CONTRACTOR's response thereto which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services").

#### **II. TERM AND COMPENSATION**

1. The term of this Contract (the "Term") will commence on July 1, 2007 and continue through June 30, 2008, with the option to renew for an additional one-year term, upon mutual written agreement of the parties, and subject to the appropriation of funding by the Shelby County Board of Commissioners.
2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services the sum total not to exceed ONE HUNDRED THOUSAND AND 00/100(\$100,000.00) DOLLARS (the "Fee") during the term of this Contract. The Fee shall be the agreed upon rates specified in the attached Exhibit "B" for qualifying Defendant's that are either in custody (also referred to as "incarcerated individuals") or that have been released on bond (also referred to as "non-incarcerated individuals").



To qualify for subject Assessments, the General Sessions Courts or Criminal Courts MUST refer the Defendant for Assessment prior to case disposition, as more specifically set forth in the attached Exhibit "B", which shall be incorporated by reference as if fully stated herein verbatim.

3. Specifically, the Fee shall be paid for each Assessment completed and invoiced to the COUNTY at a rate of \$316.00 for incarcerated individuals and \$255.00 for non-incarcerated individuals, as more fully set forth in Number 6 of the attached Exhibit B.
4. The CONTRACTOR shall submit invoices to the COUNTY on a monthly basis for Services performed during the preceding month and must include clients' booking number or indictment number. Invoices shall be submitted in duplicate to the address set forth in Paragraph 30 of this Contract to the attention of Janice Mosley. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.

### **III. GENERAL CONDITIONS**

The parties further agree as follows:

#### **1. CONTROL**

All Services by the CONTRACTOR will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

#### **2. CONTRACTOR'S PERSONNEL**

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required performing the duties assigned to them. Any employee of the CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

#### **3. INDEPENDENT STATUS**

- a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the



right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

- b. It is further expressly agreed and understood by CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONTRACTOR for the Services performed shall be on the CONTRACTOR's letterhead.

#### 4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

#### 5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
  - i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
  - ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
  - iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.

- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.
- d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONTRACTOR and the COUNTY may withhold any payments to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONTRACTOR is determined.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any CONTRACTOR's Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONTRACTOR covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance



of the Services. The CONTRACTOR warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or contractor to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONTRACTOR will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONTRACTOR and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. CONTRACTOR shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the CONTRACTOR its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.
- b. CONTRACTOR expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- e. CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against CONTRACTOR or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONTRACTOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONTRACTOR is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).



- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONTRACTOR agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party

making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to CONTRACTOR;
- d. Making disability insurance contributions on behalf of CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

23. INCORPORATION OF OTHER DOCUMENTS

- a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are



maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.

- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

24. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONTRACTOR shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

25. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

The COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

26. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

27. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONTRACTOR due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

28. ORGANIZATION STATUS AND AUTHORITY

- a. CONTRACTOR represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law,

any order of any court or other agency of government, the organizational documents of CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

29. INSURANCE REQUIREMENTS

- a. The CONTRACTOR shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONTRACTOR's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONTRACTOR or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. The CONTRACTOR will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:
  - i) Errors and Omissions/or Professional Liability coverage with limits of \$1,000,000.00 per occurrence/\$2,000,000.00 annual aggregate for this contract.
  - ii) Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence/\$2,000,000.00 annual aggregate premises/operations coverage, \$2,000,000.00 annual aggregate products/completed operations.
  - iii) Workers Compensation coverage, including coverage for sole proprietors, partners, and officers, regardless of requirement by Tennessee State Statute.
  - iv) Commercial Auto Liability with minimum limit of \$1,000,000.00 for all owned, hired and non-owned autos.
- c. CONTRACTOR shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government  
Purchasing Department  
160 N. Main, Suite 550



Memphis, TN 38103

- d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONTRACTOR shall purchase an extended reporting endorsement and furnish evidence of same to the County.

30. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Pre-trial Services  
Attn: Janice Mosley  
160 North Main Street  
Memphis, Tennessee 38103

*and*

Shelby County Government  
Contract Administration  
160 N. Main Street, Suite 550  
Memphis, Tennessee 38103

VENDOR: The Exchange Club Family Center  
Attn: Barbara King  
2180 Union Avenue  
Memphis, Tennessee 38104

**IN WITNESS WHEREOF**, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED:**

**SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_  
Contract Administrator/  
Assistant County Attorney

\_\_\_\_\_  
A C Wharton, Jr., Mayor

**The Exchange Club Family Center**

BY: Richard C. King

TITLE: Executive Director

CORPORATE ACKNOWLEDGMENT

STATE OF Tennessee

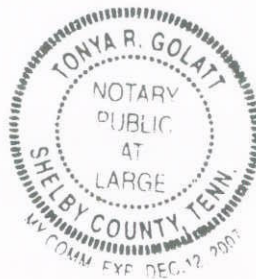
COUNTY OF Shelby

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_, the within named bargainer, a corporation, and that he as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

WITNESS my hand and official seal at office this 11 day of September 2007

Tonya R. Golati  
Notary Public

My Commission Expires: Dec. 12, 2007



## **Exhibit B**

### **The Exchange Club Family Center Domestic Violence Assessment Center (DVAC) Scope of Services – 2007-2008**

1. Clients are referred in two ways. Defendants can be referred prior to disposition by one of the General Sessions Courts or Criminal Courts or they can be referred after being placed on probation. The Attorney General schedules the defendant and forwards an appointment list to DVAC. Incarcerated defendants and probationers are seen at the Shelby County Jail.
2. The assessment focuses on assessing risk to recidivate, and risk for further domestic violence. DVAC uses several validated risk assessment instruments and also uses multiple sources of information (police and court records, victim interviews, etc.) Treatment recommendations are also developed with the focus of reducing risk.
3. The assessment can be completed within one appointment that is generally less than three hours. The defendant is first seen for a brief screening interview to insure that the process and purpose of the evaluation is understood. Reading and comprehension are assessed. The defendant then completes a selected battery of test instruments. Finally, a brief, structured clinical interview is conducted.
4. A report is generated for every defendant. A summary of results of the various risk assessments is included. Treatment recommendations are detailed and a rationale for each recommendation is offered.
5. If final disposition has not been made the report is forwarded to the Office of the Attorney General at least one day prior to the court hearing. If a final disposition has been made and the defendant is on probation, the report is forwarded to the appropriate probation office. Reports can also be sent to treatment providers and victim advocates when requested. Victims may also have access to the reports.
6. The Exchange Club Family Center will invoice the County for the cost per assessment that is not covered by fees collected. Costs will be invoiced to the COUNTY at a rate of \$316.00 for incarcerated individuals and \$255.00 for non-incarcerated individuals, but in no event shall the total amount billed for the contract period exceed the total amount of the contract as agreed upon in Section II, Subsection 2.
7. DVAC attempts to contact, by telephone, the victim of every arrest in order to provide safety planning information, information about available community resources and obtain information to assist in assessing risk and making treatment recommendations. DVAC also provides, to the Attorney General a "preliminary" risk assessment, based on arrest reports and criminal histories, for every arrest within two days.



## **Amendment to Agreement**

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this \_\_\_\_\_ day of July 2008, by and between Shelby County Government (hereafter "County") and The Exchange Club Family Center of Memphis (hereafter "Contractor").

WHEREAS, the parties previously entered into an agreement (hereinafter "Agreement") dated September 4, 2007, for professional services for assessment of domestic violence offenders as referred by courts within Shelby County; and.

WHEREAS, the parties now desire to enter into this Amendment to renew the Agreement for the period July 1, 2008 to June 30, 2009 pursuant to the Agreement which is attached as Exhibit "A".

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this agreement and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. The Agreement between the parties is hereby renewed for a one (1) year period beginning July 1, 2008 through June 30, 2009.
2. The total cost for this renewal period shall not exceed ONE HUNDRED THOUSAND and 00/100 Dollars (\$100,000.00) payable in accordance with the terms of the Agreement.
3. This Amendment shall be subject to and contingent upon adoption of the Fiscal Year 2008-2009 Operating Budget of Shelby County Government by the Board of County Commissioners and approval of the cost for this Amendment within said Operating Budget.
4. The terms and conditions of the original Agreement, except as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**APPROVED AS TO FORM  
AND LEGALITY:**

**SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_  
Contract Administrator  
Assistant County Attorney

\_\_\_\_\_  
A C WHARTON, JR, MAYOR



**The Exchange Club Family Center**

By: Barbara C. King  
Title: Executive Director

CORPORATE ACKNOWLEDGMENT

STATE OF TENNESSEE

COUNTY OF Shelby County Government

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath acknowledged himself/herself to be \_\_\_\_\_ or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_, the within named bargainer, a corporation, and that he/she as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

WITNESS my hand and official seal at office this 19 day of June, 2008.

Tonya R. Golatt  
Notary Public

My Commission Expires:



**GRATUITY DISCLOSURE FORM****Shelby County Ethics Commission**

**INSTRUCTIONS:** This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.

1. **NAME**

The Exchange Club Family Center

2. **DATE OF GRATUITY**

N/A

3. **NATURE AND PURPOSE OF THE GRATUITY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. **NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY**

\_\_\_\_\_

5. **NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**

\_\_\_\_\_

6. **ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**

\_\_\_\_\_

\_\_\_\_\_



7. DESCRIPTION OF THE GRATUITY

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8. COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)

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9. The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.

Barbara C. King  
Signature

6/19/08  
Date

Barbara C. King  
Print Name

*A copy of your completed form will be placed on the Shelby County Internet website.*

ITEM # \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

COMMISSIONER: RITZ

APPROVED BY: \_\_\_\_\_  
COUNTY ATTORNEY

**Resolution to amend the definition of the Design Review Committee in the resolution approved June 16, 2008 amending the policies and procedures of the Shelby County Homestead Program pursuant to Chapter 281 of the Public Acts of 1985 and as authorized by the Shelby County Mayor and the Shelby County Board of Commissioners by resolution on October 7, 1985.  
Sponsored by Commissioner Mike Ritz.**

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WHEREAS, The "Tennessee Homestead Act" was approved by the General Assembly on April 25, 1985, and was officially designated as Chapter 281 of the Public Acts of 1985; and

WHEREAS, Section 5 of Chapter 281 of the Public Acts of 1985 required the adoption of an implementation plan by the local governing body in order to effectively implement the "Tennessee Homestead Act" by local governing bodies; and

WHEREAS, On October 7, 1985 the Shelby County Mayor and the Shelby County Board of Commissioners did adopt an implementation plan via Resolution that complied with Section 5 of Chapter 281 of the Public Acts of 1985; and

WHEREAS, The October 7, 1985 Resolution set forth the implementation plan for the Shelby County Homestead Program in compliance with the State of Tennessee; and

WHEREAS, The June 16, 2008 Resolution amended the aforesaid implementation plan, including defining the "Design Review Committee means an internal review committee composed of representatives of Shelby County Government".

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE that the Design Review Committee for Homestead lots as noted in the Homestead Program Implementation Plan be defined and amended as follows:

"Design Review Committee means a committee composed of Ms. Mary Baker, Manager of Land Use Controls; Ms. Nancy Baker of the Landmark Commission; Ms. Julie Gray of Construction Codes Enforcement; Ms. Ruby Hill of the Department of Housing and Mr. Tom Moss of Shelby County Land Bank; or their replacement as determined by the Director of the Division of Planning and Development; and a county commissioner appointed by the Chairman of the County Commission; and a citizen member appointed by the Memphis Community Development council. Four votes will be required for a decision by the Design Review Committee."

BE IT FURTHER RESOLVED That the Shelby County Mayor is authorized to take any and all actions necessary to implement the Shelby County Homestead Program under this revised term of the implementation plan.

\_\_\_\_\_  
AC Wharton, County Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

Item # \_\_\_\_\_ Prepared by: Gloria Kelly

Commissioner: \_\_\_\_\_ Approved by: \_\_\_\_\_

**Resolution approving the sale of Fifteen Delinquent Tax Parcels totaling \$41,200.00 from Tax Sale (s) 005, 95.2, 99.05, 0203, 0204, 0205, 0209, and 0304 pursuant to the provisions of TCA 67-5-2507.**

**Sponsored by: Commissioner J. W. Gibson, II**

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**WHEREAS,** The Shelby County Board of Commissioners Property Committee pursuant to the provisions of Tennessee Code Annotated, Section 67-5-2507 has set a minimum price on the above referenced FIFTEEN parcels of delinquent tax property totaling \$41,200.00 from tax sale(S) 005, 95.2, 99.05, 0203, 0204, 0205, 0209, and 0304; and

**WHEREAS,** The Shelby County Land Bank Department has negotiated sales of said properties; and

**WHEREAS,** Said properties have been advertised for an increased offer pursuant to TCA 67-5-2507.

**NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That FIFTEEN delinquent tax parcels totaling \$41,200.00 from tax sale(S) 005, 95.2, 99.05, 0203, 0204, 0205, 0209, and 0304 be sold as set forth in Exhibit "A" which is attached hereto and incorporated herein by reference.

**BE IT FURTHER RESOLVED,** That the County Mayor is hereby authorized to execute a Quit Claim Deed(s) and any other documents necessary for the closing of the aforementioned parcels of property as set forth in Exhibit "A".

\_\_\_\_\_  
A C Wharton, Jr., Shelby County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commissioners

Adopted: \_\_\_\_\_

EXHIBIT "A"									
EXHIBIT #	TAX SALE	WBP	ADDRESS LOT SIZE	ZONING CODE	TOTAL TAXES AND FEES	PURCHASER	EVALUATION	SALES PRICE	PLANNED USE
4428	0204	034022000000250	1648 S. Lauderdale St. 50' x 80'	R-D	\$7,387.80	Edward Becton	\$1,700.00 Vacant Lot	\$1,700.00	Investment
5210	99.05	035088000000110	Barton St. 60' x 115'	RES	\$603.80	Bobby Barr	\$3,500.00 Vacant Lot	\$3,000.00	Investment
11254	0005	039005000000250	1120 Sixth St. 54' x 130'	RES	\$6313.99	Melvin Barton	\$4,000.00 House	\$3,000.00	Investment
4332	95.2	042035000000550	2384 Shasta Ave. 40' x 110'	R-D	\$6,722.54	Trustees Charity Outreach Ministries Empowerment Center	\$1,800.00 Vacant Lot	\$1,500.00	Church Property
7874	0204	047020000000690	1547 Airways Blvd. 60' x 143'	R-D	\$12,538.06	Laymon Coleman	\$3,000.00 Vacant Lot	\$1,800.00	Investment
8626	0205	050037000000200	46 W. Davant Ave. 50' x 150'	R-D	\$11,490.87	Lionel Gray	\$7,000.00 Duplex	\$7,000.00	Investment
11308	0005	051016000000030	Mosby Ave. 30' x 64'	RES	\$1,220.76	Methodist Health Care - Methodist Hospitals	\$700.00 Vacant Lot	\$1,000.00 Bid Off	Investment Bid Off
9312	0203	053044000000260	4009 Speck Dr. 70' x 125'	RS-6	\$13,232.79	Sylvester R. Crawford, Sr.	\$8,000.00 House	\$8,200.00 Bid Off	Investment Bid Off
12024	0304	0740370H0000150	3504 Boxdale # 3 .011 acres	RTH	\$13,435.25	Curtis D. Nelson, Jr.	\$4,000.00 Condo	\$2,000.00	Investment
12780	0205	0740370H0000950	3536 Boxdale # 3 .011 acres	RTH	\$8,263.70	Curtis D. Nelson, Jr.	\$4,000.00 Condo	\$2,000.00	Investment
12781	0204	0740370H0000980	3536 Boxdale # 6 .011 acres	RTH	\$8,340.96	Curtis D. Nelson, Jr.	\$4,000.00 Condo	\$2,000.00	Investment
12027	0304	0740370H0000210	3508 Boxdale # 1 .011 acres	RTH	\$3,465.54	Joseph Thomas and Ester Thomas (Son & Mother)	\$4,000.00 Condo	\$2,000.00	Investment
12770	0205	0740370H0000260	3508 Boxdale # 6 .011 acres	RTH	\$8,322.28	Joseph Thomas and Daniel Thomas (Brothers)	\$4,000.00 Condo	\$2,000.00	Investment



12782	0205	0740370H001010	3538 Boxdale # 1 .011 acres	RTH	\$10,548.69	Habib Osman	\$4,000.00 Condo	\$2,000.00	Investment
12052	0209	0740370H001110	3542 Boxdale # 3 .011 acres	RTH	\$6,308.49	Shebna Osanmoh	\$4,000.00 Condo	\$2,000.00	Investment

15 Properties      Total      \$41,200.00

B15-05/28/08

## **SUMMARY SHEET**

### **I. Description of Item**

A Resolution approving the sale of Fifteen Delinquent Tax Lien Properties (Exhibit "A") totaling \$41,200.00, acquired by Shelby County Government through Tax Sales 005, 95.2, 99.05, 0203, 0204, 0205, 0209, and 0304 conducted by the Shelby County Trustee's Office. The parcels were sold to various buyers by the Shelby County Land Bank pursuant to the provisions of TCA 67-5-2507.

### **II. Source and Amount of Funding**

Amount Expended/Budget Line Item

All Costs (Direct/Indirect)

Additional or Subsequent Obligations or Expenses of Shelby County

### **III. Contract Items**

Offer to Purchase

Terms

### **IV. Additional Information Relevant to Approval of this Item**

#### **I. Description of Item**

Administration recommends approval of this Resolution

Exhibit "A" (Description of Sales)

#### **II. Source and Amount of Funding**

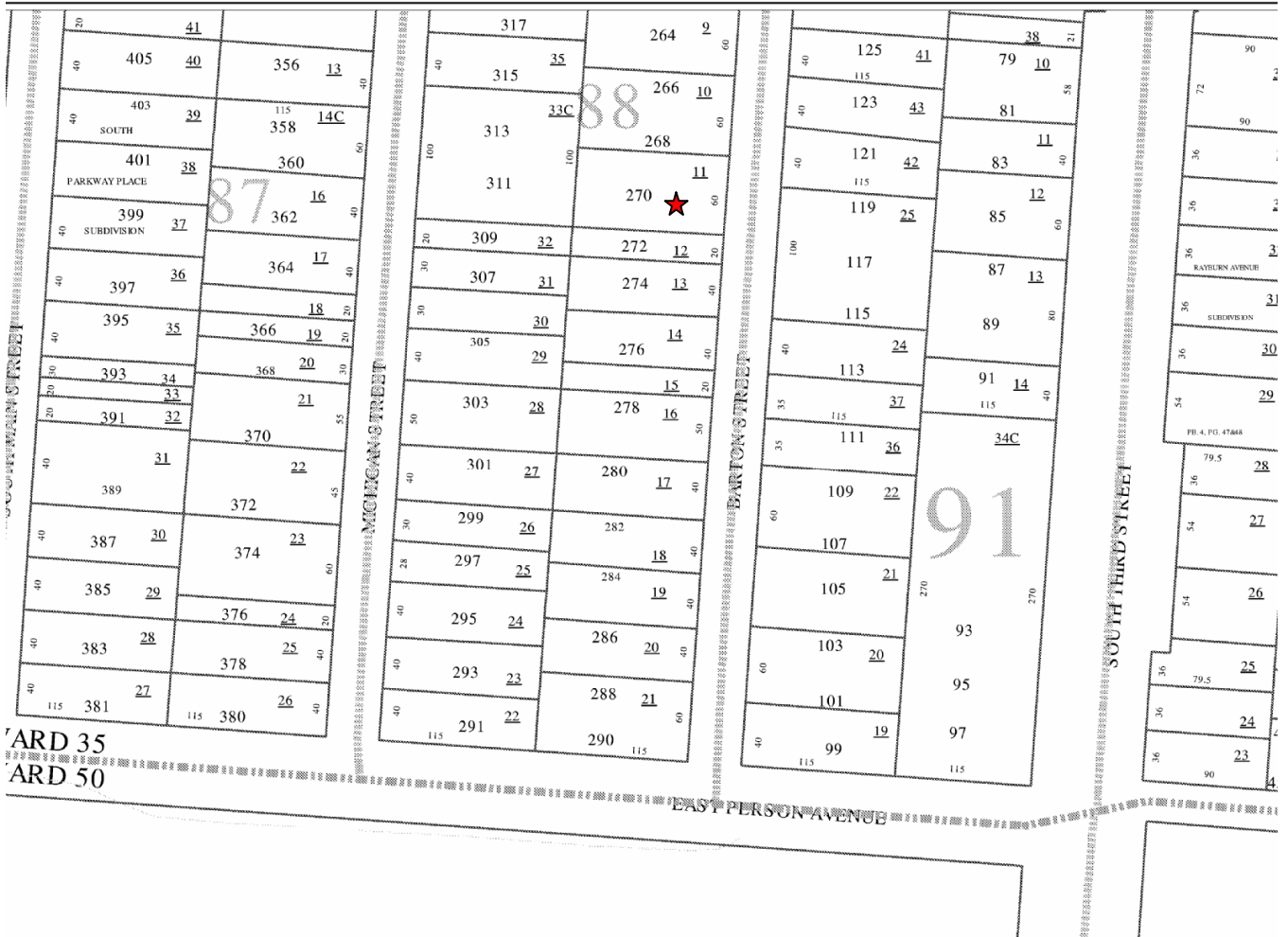
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# Ward 035



035 0880 0 00011 0

Ward 039



039 0050 0 00025 0

# Ward 042

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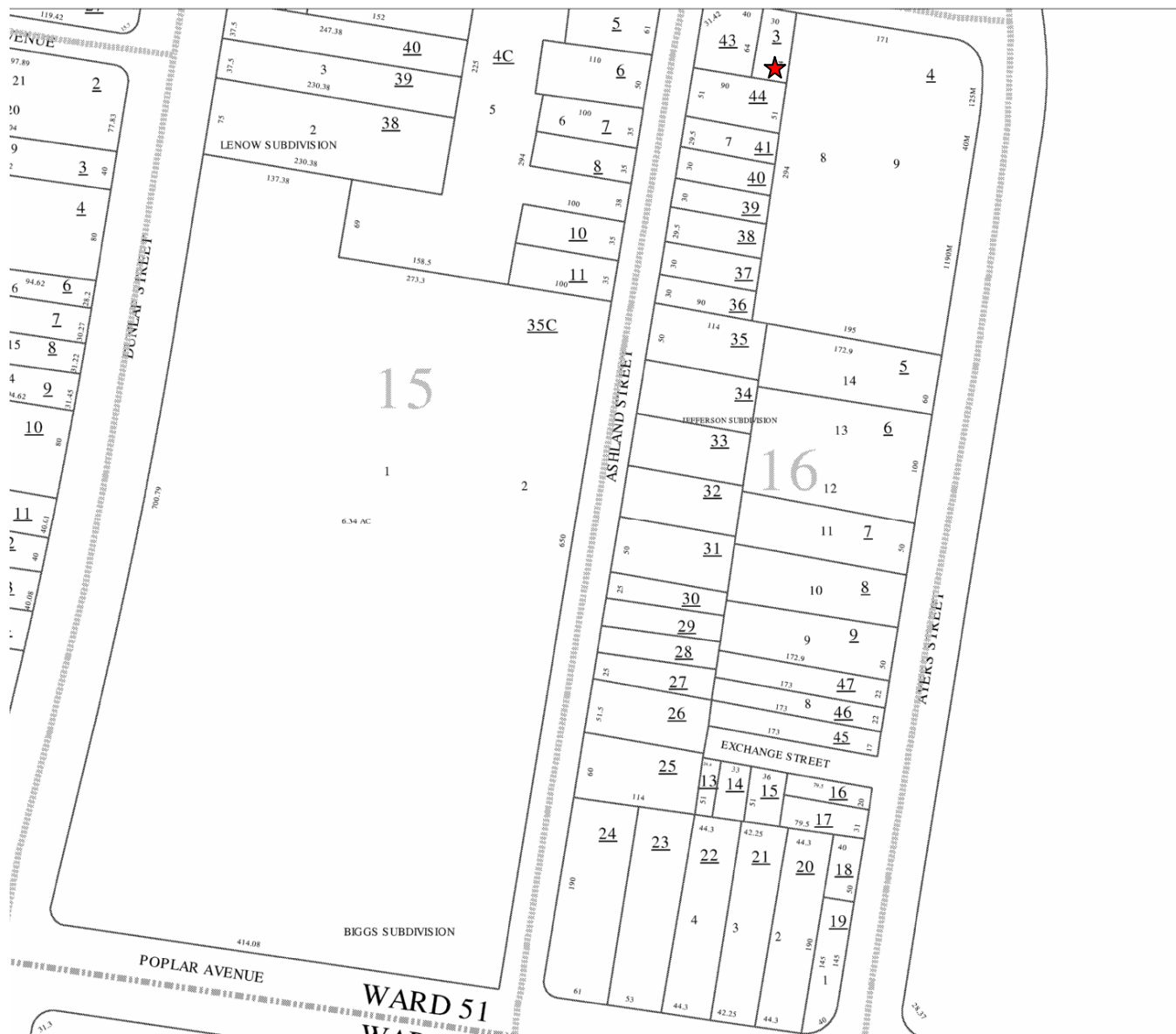


# Ward 050



050 0370 0 00020 0

Ward 051



051 0160 0 00003 0

# Ward 053



053 0440 0 00026 0

## Ward 074

32



074 0370 H 00015 0, 074 0370 H 00095 0, 074 0370 H 00098 0, 074 0370 H 00021 0  
074 0370 H 00026 0, 074 0370 H 00101 0, 074 0370 H 00111 0

Item # \_\_\_\_\_ Prepared by: Gloria Kelly  
Commissioner: \_\_\_\_\_ Approved by: \_\_\_\_\_

**Resolution approving the sale of Six Delinquent Tax Parcels totaling \$20,500.00 from Tax Sale (s) 0203, 0204, and 0305 pursuant to the provisions of TCA 67-5-2507.**

**Sponsored by: Commissioner J. W. Gibson, II**

\_\_\_\_\_

**WHEREAS,** The Shelby County Board of Commissioners Property Committee pursuant to the provisions of Tennessee Code Annotated, Section 67-5-2507 has set a minimum price on the above referenced SIX parcels of delinquent tax property totaling \$20,500.00 from tax sale(S) 0203, 0204, and 0305; and

**WHEREAS,** The Shelby County Land Bank Department has negotiated sales of said properties; and

**WHEREAS,** Said properties have been advertised for an increased offer pursuant to TCA 67-5-2507.

**NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That SIX delinquent tax parcels totaling \$20,500.00 from tax sale(S) 0203, 0204, and 0305 be sold as set forth in Exhibit "A" which is attached hereto and incorporated herein by reference.

**BE IT FURTHER RESOLVED,** That the County Mayor is hereby authorized to execute a Quit Claim Deed(s) and any other documents necessary for the closing of the aforementioned parcels of property as set forth in Exhibit "A".

\_\_\_\_\_  
A C Wharton, Jr., Shelby County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commissioners

Adopted: \_\_\_\_\_



EXHIBIT "A"									
Exhibit #	TAX SALE	WBP	ADDRESS LOT SIZE	Zoning Code	Total Taxes and Fees	PURCHASER	EVALUATION	SALES PRICE	PLANNED USE
8516	0204	050010000000190	250 McKellar Ave. 50' x 150'	RS-6	6,358.32	Wilson Vasconez & Margesa Vasconez	\$6,000.00 HOUSE	\$5,000.00	Investment
9067	0203	052036000000390	670 Eva St. 50' x 125'	R-D	\$10,095.18	Robert Anthony Jenkins	\$2,500.00	\$2,000.00	Expand Property Size
9231	0204	052089000000110	741 Kippley St. 50' x 115'	R-D	\$6,175.43	Kenny Evans	\$5,000.00 HOUSE	\$5,000.00	Investment
12786	0305	075113000000030	Cavalier Drive 61' x 150'	R-D	\$4,607.14	Irma J. Jones	\$4,500.00	\$2,500.00	Expand Property Size
13815	0204	075200000000150	4774 Twelfth St. 95' x 100'	RS-6	\$8,932.43	Shawn Mackey	\$4,000.00 DUPLEX	\$4,000.00	Investment
144373	0305	082061000000280	Pittman Rd. 52' x 208'	RS-0	\$2,670.58	Christopher Body & Angela Body	\$2,500.00	\$2,000.00	Expand Property Size

**SHELBY COUNTY BOARD OF COMMISSIONERS**

**SUMMARY SHEET**

**I. Description of Item**

A Resolution approving the sale of Six Delinquent Tax Lien Properties (Exhibit "A") totaling \$20,500.00, acquired by Shelby County Government through Tax Sales 0203, 0204, and 0305 conducted by the Shelby County Trustee's Office. The parcels were sold to various buyers by the Shelby County Land Bank pursuant to the provisions of TCA 67-5-2507.

**II. Source and Amount of Funding**

Amount Expended/Budget Line Item

All Costs (Direct/Indirect)

Additional or Subsequent Obligations or Expenses of Shelby County

**III. Contract Items**

Offer to Purchase

Terms

**IV. Additional Information Relevant to Approval of this Item**

**I. Description of Item**

Administration recommends approval of this Resolution

Exhibit "A" (Description of Sales)

**II. Source and Amount of Funding**

N/A

# Ward 050



050 0100 0 00019 0

Ward 052



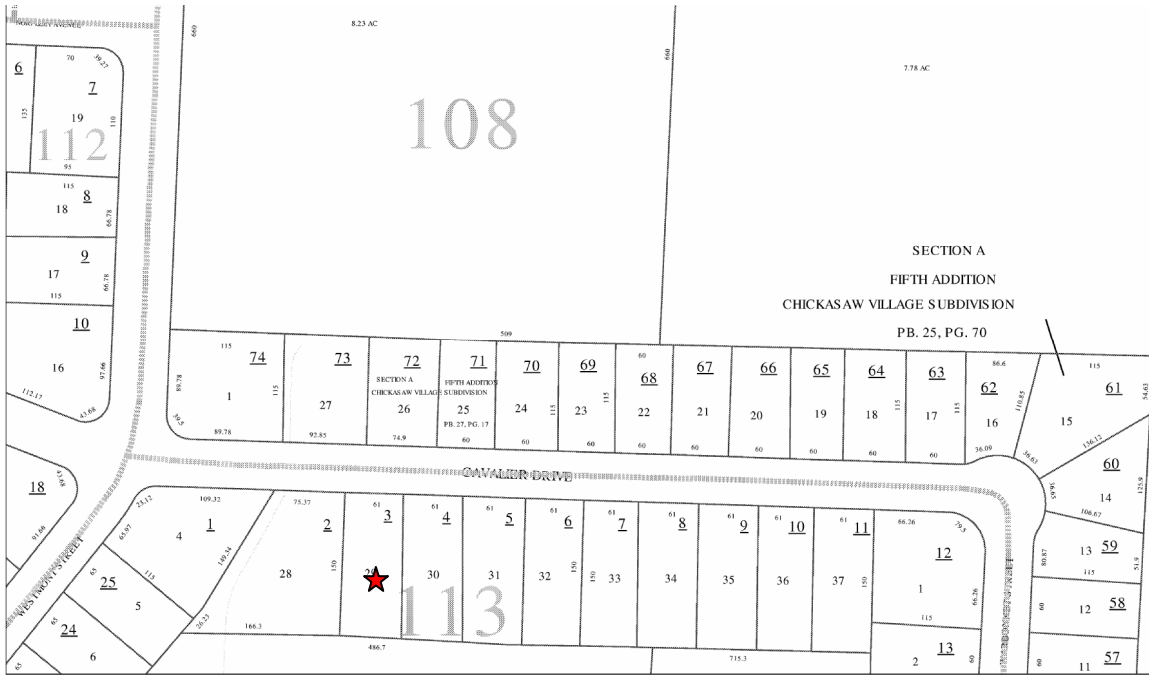
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## Ward 052



**052 0890 0 00011 0**

## Ward 075



**075 1130 0 00003 0**



# Ward 075



075 2000 0 00015 0

## Ward 082



082 0610 0 00028 0

ITEM # \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

COMMISSIONER: RITZ

APPROVED BY: \_\_\_\_\_  
COUNTY ATTORNEY

**Resolution deferring approval of the Shelby County Board of Education Operating Budget for FY2009 as adopted by the Shelby County Board of Education.  
Sponsored by Commissioner Mike Ritz.**

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WHEREAS, The 2008/2009 Operating Budget of the Shelby County Board of Education was adopted as amended on June 12, 2008 and submitted to the Shelby County Board of County Commissioners for approval; and

WHEREAS, The Operating Budget of the Shelby County Board of Education for FY2008/2009 has been reviewed by the Education Committee of the Shelby County Board of Commissioners on July 2, 2008 and again on July \_\_\_, 2008; and

WHEREAS The Education Committee desires further clarification or an amendment to the FY2009 Shelby County School Budget; and

WHEREAS, The Education Committee is concerned with the salary adjustments for administration personnel over and above the 2% salary increases budgeted for the teachers.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE That the Shelby County Board of Education submit a budget to the Education Committee that does not include salary increases over 2% for principals, assistant principals, the Superintendent, all assistants and deputy superintendents or other management level administrators, and submit to the Education Committee the exact budgeted amount for the salary increases for the administrators as approved in the June 12, 2008 Budget.

BE IT FURTHER RESOLVED That a copy of this resolution and the attached Exhibit A is to be placed on file and incorporated into the Minutes of this meeting of the Shelby County Board of Commissioners.

\_\_\_\_\_  
AC Wharton, County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED:\_\_\_\_\_

Item #: \_\_\_\_\_

Prepared by: Steve Summerall

Approved by: \_\_\_\_\_

RESOLUTION APPROVING THE SHELBY COUNTY BOARD OF  
EDUCATION OPERATING BUDGET FOR FISCAL YEAR 2009 AS  
ADOPTED BY THE SHELBY COUNTY BOARD OF EDUCATION.  
SPONSORED BY CHAIRMAN DAVID LILLARD.

---

WHEREAS, The 2008/2009 Operating Budget of the Shelby County Board of Education was adopted as amended on June 12, 2008 and submitted to the Shelby Board of County Commissioners for approval; and

WHEREAS, The Operating Budget of the Shelby County Board of Education for Fiscal Year 2008/2009 has been reviewed by the Education Committee of the Shelby County Board of Commissioners on July 2, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Operating Budget of the Shelby County Board of Education, as summarized in the School Funds Appropriation Resolution for Fiscal Year 2008/2009, attached hereto and incorporated herein as Exhibit A is approved.

BE IT FURTHER RESOLVED, That a copy of this resolution and the attached Exhibit A is to be placed on file and incorporated into the Minutes of this meeting of the Shelby County Board of Commissioners.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

**Shelby County Schools  
2008-09**

	<b>General Purpose *</b>	<b>Federal Projects</b>	<b>Central Cafeteria</b>
REGULAR INSTRUCTION PROGRAM	183,497,140	1,715,048	
ALTERNATIVE EDUCATION	1,619,821	135,595	
SPECIAL EDUCATION PROGRAM	31,694,849	13,641,104	
VOCATIONAL EDUCATION PROGRAM	6,202,371	425,382	
ATTENDANCE	790,707		
HEALTH SERVICES	996,643		
OTHER STUDENT SUPPORT	8,774,463		
SUPPORT: REG. INSTRUCTION	7,372,429	2,956,371	
SUPPORT: ALTERNATIVE EDUCATION	1,035,525		
SUPPORT: SPEC. EDUCATION	9,727,546		
SUPPORT: TECH. EDUCATION	167,968		
BOARD OF ED. SERVICES	11,503,777		
OFFICE OF SUPERINTENDENT	878,512		
OFFICE OF PRINCIPAL	25,603,076		
FISCAL SERVICES	2,516,068		
HUMAN RESOURCES	1,761,062		
OPERATION OF PLANT	20,855,634		
MAINTENANCE OF PLANT	7,453,777		
TRANSPORTATION	10,211,944	2,720,952	
CENTRAL AND OTHER	16,979,052		15,918,125
FOOD SERVICE			
REGULAR CAPITAL OUTLAY	4,169,000		
TOTALS BY FUNDS	353,811,363	21,594,452	15,918,125

\* General Fund Budget was amended and approved by Shelby County Board of Education on 6/12/08.

**SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET**

Referred to Commission Committee 4- Law Enforcement, Fire, Corrections & Courts

For Commission Action on \_\_\_\_\_

**DESCRIPTION OF ITEM:**

**RESOLUTION ESTABLISHING AND DEFINING THE DUTIES AND  
RESPONSIBILITIES OF THE SHELBY COUNTY CRIMINAL JUSTICE  
COORDINATING COUNCIL AND APPOINTING MEMBERS TO SAID  
COUNCIL. RESOLUTION SPONSORED BY COMMISSIONER SIDNEY  
CHISM.**

**CHECK ALL THAT APPLY BELOW:**

☒ This Action does NOT require expenditure of funds.

\_\_\_\_\_ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_; County CIP Funds- \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

**Originating Department:** SHERIFF'S OFFICE

**APPROVAL:**

Dept. Head: \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

Elected Official Sheriff Mark Luttrell 545-5500  
(Print your name & phone #.) (Initials) (Date)

Division Director: Harvey Kennedy 545- 4510  
(Print your name & phone #.) (Initials) (Date)

CIP - A&F Director \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

Finance Dept. \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

County Attorney: Kathy R. Sh  
(Print your name & phone #.) (Initials) (Date)

CAO/Mayor: A C Wharton Jr  
(Print your name & phone #.) (Initials) (Date)



Item # \_\_\_\_\_

Prepared by: Harvey Kennedy

Approved by: [Signature]

**RESOLUTION ESTABLISHING AND DEFINING THE DUTIES AND RESPONSIBILITIES OF THE SHELBY COUNTY CRIMINAL JUSTICE COORDINATING COUNCIL AND APPOINTING MEMBERS TO SAID COUNCIL. RESOLUTION SPONSORED BY COMMISSIONER SIDNEY CHISM.**

**WHEREAS**, the Criminal Justice System within Shelby County is a large multi-agency system comprised of many disparate elements and separately elected officials ; and

**WHEREAS**, there is a need to improve the administration of justice in Shelby County through planning, research, evaluation, and system-wide coordination of criminal justice activities; and

**WHEREAS**, the Sheriff's Office commissioned a Criminal Justice Master Plan that examined many elements of the Criminal Justice System in Shelby County and made specific recommendations regarding improvements in efficiency and cost savings; and

**WHEREAS**, the Sheriff and Mayor of Shelby County are in agreement that in order to develop the necessary plans and ensure the execution of the recommendations contained in the Master Plan, a select group of Elected Officials and Administrators must be designated to form the Criminal Justice Coordinating Council; and

**WHEREAS**, the Mission, Scope, Role, and Membership along with Expected Outcomes of the Criminal Justice Coordinating Council are contained in a concept paper and attached hereto as Exhibit A; and

**WHEREAS**, bylaws of the Criminal Justice Coordinating Council have been developed and attached hereto as Exhibit B.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, that the establishment of a Shelby County Criminal Justice Coordinating Council is hereby approved.

**BE IT FURTHER RESOLVED**, that the Mission, Scope, Role and Membership outlined in Exhibit A, which is attached hereto and incorporated hereinto by this reference as if fully set forth herein is hereby approved.

**BE IT FURTHER RESOLVED**, that the Bylaws of the Criminal Justice Coordinating Council contained in Exhibit B which is attached hereto and incorporated hereinto by this reference as if fully set forth herein is hereby approved.

\_\_\_\_\_  
A C Wharton, Jr., Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_  
Clerk of County Commission

ADOPTED \_\_\_\_\_

## Summary Sheet

### I. Description of Item

The Shelby County Criminal Justice Coordinating Council (CJCC) is created to deal with justice system issues within the boundaries of Shelby County. Shelby County Government has responsibilities that include all aspects of the adult and juvenile justice systems. Activities include law enforcement, pretrial supervision, prosecution, defense, pre and post trial detention, and community supervision and re-entry strategies. The initial focus of the CJCC will be to coordinate planning and activities of those agencies within the purview of County Government. While this scope may, and should, be re-examined periodically it makes sense to begin at a manageable level.

### II. Source and Amount of Funding

N/A

### III. Contract Items

N/A

### IV. Additional information relevant to approval of this item

This Council will be critical in implementing the recommendations of the Jail Master Plan that were detailed in the Carter Goble Master Plan. The Sheriff and the Mayor strongly support approval of this resolution.

**CRIMINAL JUSTICE COORDINATING COUNCIL  
EXECUTIVE SUMMARY**

June 16, 2008

This is a summary of the concept paper discussing the creation of the Shelby County Criminal Justice Coordinating Council (CJCC). This summary will address the following issues:

1. Mission
2. Scope
3. Role of CJCC
4. Membership
5. Outcomes
6. Approval Process

**MISSION**

The Shelby County Criminal Justice Coordinating Council exists to improve the administration of justice through planning, research, evaluation, and system-wide coordination of criminal justice activities.

**SCOPE**

The Shelby County Criminal Justice Coordinating Council (CJCC) is created to deal with justice system issues within the boundaries of Shelby County. Shelby County Government has responsibilities that include all aspects of the adult and juvenile justice systems. Activities include law enforcement, pretrial supervision, prosecution, defense, pre and post trial detention, and community supervision and re-entry strategies. The initial focus of the CJCC will be to coordinate planning and activities of those agencies within the purview of County Government. While this scope may, and should, be re-examined periodically it makes sense to begin at a manageable level.

**ROLE OF CJCC**

The CJCC should be a standing body devoted to the study and improvement of the local criminal justice system. On a macro level, the CJCC will meet at least quarterly to discuss system wide issues and make policy decisions and recommendations. On a micro level, the CJCC will establish standing committees to coordinate system wide responses to particular problems or issues. The Chair of the CJCC may recruit various system or topical experts to serve on committees according to need.



## **MEMBERSHIP**

The proposed make-up of the CJ Coordinating Council includes the leadership of the local criminal justice agencies. Although broad representation is essential, it is also necessary to limit the group to a manageable number.

The CJ Coordinating Council should include the following members:

- Administrator, Shelby County Pretrial Services
- Chair, University of Memphis Department of Criminology and Criminal Justice
- District Attorney General
- Director Shelby County Division of Community Services
- Director Shelby County Division of Corrections
- Jail Director
- Sheriff
- President, Memphis Shelby Crime Commission
- Public Defender
- Shelby County Criminal Justice Coordinator
- A member of the judiciary

## **OUTCOMES**

1. Creation of a Memorandum of Understanding to be entered into by all participating agencies.
2. Development of an action plan to follow up on the recently published Shelby County Jail Master Plan.
3. Development of a strategic plan for the criminal justice system to include identification of problems and ranking of system wide priorities
4. Establishment of a process to implement the strategic plan
5. Ongoing forum to discuss criminal justice policy and problems
6. The CJCC will serve as a central point of review for federal/state/other grants in criminal justice areas to include making funding recommendations. Assumption of this responsibility will eliminate the need for separate JAG, JAIBG and various other committees.
7. Submit recommendations regarding proposed legislation in criminal justice areas
8. Annual report to Mayor and County Commission on CJCC activities.

## **APPROVAL PROCESS**

The Criminal Justice Coordinating Council should be created by a resolution by the Shelby County Commission. Additionally, a memorandum of understanding should be entered into by all participating agencies.

# **CRIMINAL JUSTICE COORDINATING COUNCIL CONCEPT PAPER**

June 16, 2008

This is a concept paper discussing the creation of the Shelby County Criminal Justice Coordinating Council (CJCC). The CJCC is a concept that has been broadly discussed in a number of forums but, as yet, no formalized structure has been proposed. This paper will address the need for criminal justice planning and coordination and, more specifically, the proposal to coalesce the leadership of those County agencies involved in criminal justice into the Shelby County Criminal Justice Coordinating Council. This paper will cover the following areas:

1. Criminal Justice System
2. Need for Coordination/Planning
3. Cautions
4. Advantages of Coordination/Planning
5. A Proposed Model for Coordination
6. Scope
7. Operational Framework
8. Next Steps
9. Conclusion

This concept paper relied heavily on the US Department of Justice publication "Guidelines for Developing a Criminal Justice Coordinating Committee" released in January 2002 and a "Research Brief on Criminal Justice Coordination" prepared by the Memphis Shelby Crime Commission in June 2001.

## **THE CRIMINAL JUSTICE SYSTEM**

Criminal justice in Shelby County is big business by any number of measures. It includes offices/agencies with responsibilities ranging from law enforcement, to prosecution, to defense, to a variety of clerical and administrative offices. The size of this system can be illustrated in a number of ways. One example is by considering the number of elected officials directly involved in criminal justice:

Criminal Court Clerk	1
Criminal Court Judges	10
District Attorney	1
General Sessions Court Clerk	1
General Sessions Criminal Court Judges	9
Juvenile Court Clerk	1
Juvenile Court Judge	1
Sheriff	1
Total	25

This does not include members of the Memphis City Council nor the Shelby County Commission, bodies responsible for funding the various criminal justice agencies. Nor does it include the judges, or other elected officials, from the various municipalities in Shelby County.

Another way to measure the size of our criminal justice system is by considering the number of agencies operating in the system. A partial list includes:

Criminal Court Clerk	Memphis Police Department
Criminal Court Judges	Public Defenders Office
Division of Corrections	Shelby County Pretrial Services
District Attorney General	Shelby County Sheriff=s Department
General Sessions Clerk	Shelby County Victims Assistance Center
General Sessions Judges	Tennessee Board of Probation and Parole
Juvenile Court	US Attorney
Juvenile Court Clerk	US Probation

Still another method of measuring the size of our criminal justice system is by considering the number of cases processed. In recent years there has been an average of approximately 50,000 defendants booked into the County Jail. In 2007 the average daily population of the County Jail at 201 Poplar was 2479, with an additional 254 females housed at Jail East. Additionally, the daily population of the Shelby County Correction Center has averaged nearly 3000 inmates over the past year.

Finally, perhaps the most revealing indicator of the size of our justice system can be found by reviewing the staffing and budgets dedicated to criminal justice activities. The following information for fiscal year 2007-2008 includes the, Criminal Court Clerk, Criminal Court Judges, Division of Corrections, District Attorney General, General Sessions Clerk, General Sessions Judges, Juvenile Court, Juvenile Court Clerk, the Memphis Police Department, the Public Defenders Office, Shelby County Pretrial Services, the Shelby County Sheriffs Department, and the Shelby County Crime Victims Center.

<u># Employees</u>	<u>Budget</u>
6,328	\$416,644,921

#### **NEED FOR COORDINATION/PLANNING**

The size of our justice system is startling. Perhaps even more startling is the fact that in such a large, high volume, expensive system we have no current mechanism for long term planning and coordination. Not only do we have no strategic plan for the system, we do not currently have any type of ongoing forum or mechanism in which the various criminal justice agencies come together to discuss issues.



The purposes of our system are as varied as the number of agencies operating within the system. This fragmentation is so pronounced it has caused many to describe criminal justice as a non-system. The system is adversarial in nature and the fragmentation exists, to a great extent, by design. For example, the District Attorney is responsible for prosecution of individuals charged with committing crimes whereas the Public Defenders Office is responsible for defending them. Too much co-mingling of these offices would defeat the purpose of an adversarial system of justice.

Many offices have a specific role, or point of emphasis, in the system. For example, the Police Department's focus is to enforce laws and arrest those believed to violating those laws, the judges' focus is to determine guilt or innocence in the adjudication of cases, and the Division of Corrections' focus is to provide safe and secure housing for offenders convicted in the courts. This singular focus supports development of specialized expertise but also tends to encourage a myopic approach to system problems.

Although it appears that agencies have very individual and specific areas of responsibility, the agencies in the system are intertwined and the changes instituted in one agency can seriously impact the others. For example, a dramatic increase in the number of arrests made by the law enforcement agencies could overwhelm the court calendars. An increase in incarcerative sentences in the courts could swell the population of the Corrections Center. Changes in performance or approaches can impact others, so can changes in resources. Increasing the number of courts to try to expedite dispositions would not likely achieve this goal without a concomitant increase in prosecutors, defenders, and clerks.

This inter-relatedness of purpose requires some level of cooperation and communication for the system to operate. The need for planning and coordination is a recurring theme. Heretofore, our approach has been to respond to this need in somewhat of a haphazard fashion. A number of ad hoc groups have been established that meet with varying degrees of regularity. Some examples include the Justice System Coordinating Committee (Jail Overcrowding Committee), the Mentally Ill in the Jail Committee, the Cost Bill Committee, the Jail Compliance Plan Committee, and the Justice Assistance Grant Advisory Committee. Many of these committees have been useful in insuring communication between offices and in addressing particular issues.

Although this ad hoc approach has been useful, it is primarily reactive and its successes limited. Even when communication occurs, offices tend to go back and develop individual solutions to problems identified from their own perspectives. Many offices have recognized the need for long term planning and some have even engaged in strategic planning efforts. For the most part, however, these plans have been limited to planning for a particular office. Given the impact one agency can have on the others, the ability to achieve goals of any strategic plan can be impeded by the activities of some other office in the justice system.

The need for coordination has been recognized in a number of settings. In January 2001 the Shelby County Commission passed a resolution creating the position of Criminal Justice

Coordinator. This resolution included a memorandum of understanding which was signed by the Mayor of Shelby County, Mayor of Memphis, Sheriff, Administrative Judge of the Criminal and General Sessions Courts, the District Attorney General, the Criminal Court Clerk, and the General Sessions Court Clerk.

In order to appreciate the need for planning and coordination consider the following basic questions:

1. What is the most serious criminal justice problem facing our community? Is it Drugs? Gangs? Guns? Juvenile crime? Truancy? Lack of after school activities for kids? Lack of job training?
2. How does our criminal justice system set priorities?
3. How often do multiple criminal justice agencies collaborate to maximize scarce resources?
4. What is the level of information sharing among criminal justice agencies?

These questions appear relatively simple. However, in attempting to answer them it becomes apparent we are disjointed and lack focus. What are the most serious criminal justice problems facing our community? It depends who you ask. Given the diversity of opinions and concerns that is understandable. The problem with such widely disparate answers is that solutions tend to also be widely disparate with the result that our efforts are often diluted and ineffective.

Our system does not set priorities, individual agencies and officials set them. The problem with this approach is that the result is a lack of focus for the system as a whole. Again, the result is a widely disparate set of priorities that, at best, do not support each other and, at worst, may conflict and hinder efforts of other agencies. Individual agencies set individual priorities and then we all gather at the same trough to try and get resources.

There is a degree of collaboration occurring in our justice system. The collaboration is often borne of necessity rather than a strategic approach to problem solving. Consequently, we achieve some short term benefits but have no longer range integrated solutions.

The level of information sharing is atrocious. Our system is full of stand alone information systems that result in redundant data entry, limited ability to analyze information, and a myopic view of individual cases and problems.

Given the importance of a system of justice, and the investment of resources and personnel made in our system, we should expect more.



## **CAUTIONS**

Despite the problems inherent in such a fragmented system, the independence of the various components of the system must be maintained for justice to be administered fairly. The fragmentation exists for a reason. At first glance, it appears to be a conundrum but, as the Department of Justice maintains, not fragmentation, but the problems resulting from it must be the target. (US DoJ: Guidelines for Developing a Criminal Justice Coordinating Committee).

Comprehensive planning and coordination must be pursued with the recognition that decision makers must be brought together without attempting to subordinate them to any higher authority.

The fact that the system is fragmented by design does not mean we should succumb to the problems created by the fragmentation. We simply must be cautious that our solutions do not erode the fabric of our system which is based on the independence of the contributing components.

## **ADVANTAGES OF COORDINATION/PLANNING**

Recognizing that maintaining independence is critical, it is equally clear that planning and coordination can yield numerous benefits. Some advantages include:

- Provision of a forum or mechanism for discussion of criminal justice issues
- Improved understanding of various agency roles
- Better understanding of crime and criminal justice problems
- Establishment of clear priorities and objectives
- More effective allocation of resources
- Establishment of more collaborative approaches to problem solving

Crime and public safety are invariably listed as top concerns of citizens in Shelby County. Given this high degree of public concern and the importance of the criminal justice system to the quality of life in a community, it is important to have an ongoing mechanism to discuss system issues. No such forum or mechanism currently exists. Ad hoc groups typically come together to address a particular crisis but this approach is more frequently reactive than proactive. A proactive approach requires the type of broad discussion which can best be achieved by some type of ongoing structured mechanism.

An ongoing formal process with representatives from the various components of the criminal justice system will result in discussions that lead to increased understanding of roles. This type structure or mechanism will also result in a broader discussion of issues that will lead to a more rounded understanding of crime and criminal justice problems.

A planning process, through a broad formal structure, can lead to the establishment of clear priorities and a discussion of how resources should be allocated to address those priorities. Finally, closer working relationships tend to foster more collaborative approaches to problems.

### **A PROPOSED MODEL FOR COORDINATION**

The need for coordination is generally understood and supported. What is not generally understood is how coordination can best be achieved. The need for independence in an environment of interdependence makes for a challenging proposition.

The following is a proposal to create a Criminal Justice Coordinating Committee consisting of agencies under the umbrella of Shelby County Government. This proposal builds on the template for an advisory board established in conjunction with the Local Law Enforcement Block Grant (LLEBG) program, later renamed the Justice Assistance Grant (JAG) program.

In 1996 the federal government made a large sum of money available for communities through the Local Law Enforcement Block Grant (LLEBG) program. A requirement of this block grant was that the City and County governments agree on a plan to use the funds. In order to produce this spending plan, the LLEBG advisory board was created. This group has continued to meet through each grant cycle to develop spending priorities and allocate the Justice Assistance Grant (JAG) funds. The JAG Committee was charged with the responsibility of reviewing the funding priority areas, seeking public input, and making recommendations for allocation of grant funds.

This group has a history of working through difficult issues and making recommendations involving funding of priority areas. Any decision involving allocation of resources is potentially a contentious exercise. The JAG advisory board has successfully received public input, confronted difficult issues, and established spending priorities for a number of years.

The JAG advisory board has not met on an ongoing basis nor has it pushed beyond the original scope of its responsibilities to administer these specific grant funds. It has, however, established a workable model for ongoing communication and cooperation. The JAG advisory board has already gone through many of the growing pains a newly formed CJCC would encounter. The group has credibility within County government and the criminal justice system, includes a wide array of representatives and has experience in setting priorities. The JAG advisory board also has experience in addressing contentious funding issues while maintaining independence and productive working relationships. There are significant advantages in building a Criminal Justice Coordinating Council from an existing group and thus avoiding many of the growing pains associated with this type process.

The proposed make-up of the CJ Coordinating Council begins with the inclusion of members within the sphere of Shelby County Government. Although broad representation is essential, it is also necessary to limit the group to a manageable number. For that reason, some members would be relied upon to represent other offices.



The initial members of the Shelby County Criminal Justice Coordinating Council should include:

- Administrator, Shelby County Pretrial Services
- Chair, University of Memphis Department of Criminology and Criminal Justice
- District Attorney General
- Director Shelby County Division of Community Services
- Director Shelby County Division of Corrections
- Jail Director
- Sheriff
- President, Memphis Shelby Crime Commission
- Public Defender
- Shelby County Criminal Justice Coordinator
- A member of the judiciary

### **SCOPE**

Coordinating councils exist in a variety of forms and with a range of jurisdictional coverage. The DoJ monograph "Guidelines for Developing a Criminal Justice Coordinating Committee" discusses a developmental approach to these committees (councils). The Shelby County Criminal Justice Coordinating Council (CJCC) should be designed to deal with justice issues within the boundaries of Shelby County. This allows a broad approach to criminal justice issues while limiting it to the County level of government. While this scope may, and should, be re-examined periodically it makes sense to begin at a manageable level.

Another point of concern is how the CJCC will be staffed, if at all. This is an area that needs greater exploration and discussion. The answer will be largely dependent on how the CJCC goes about accomplishing its tasks. A CJCC that is simply a structure for facilitating discussion and planning will not require much support whereas, a CJCC charged with obtaining and analyzing data would require an investment in staffing.

At this point, it is suggested the CJCC could be created without a formal staff. The office of the Shelby County Criminal Justice Coordinator can provide support and work with the Memphis-Shelby Crime Commission to coordinate research support. The staffing of the CJ Coordinating Council should be reviewed within two years of its creation to insure the structure meets the needs.

### **OPERATIONAL FRAMEWORK**

The work of the CJCC will largely be done through the creation of committees built around particular areas. Each committee will have a Chair who will be responsible for scheduling meetings and reporting on coordination efforts undertaken within that area. Committee chairs may recruit other stakeholders and topical experts to assist with the committee work. The following standing committees will provide updates/reports/recommendations for each meeting of the CJCC:

- ❖ Shelby County Jail Master Plan Response and Follow Up
- ❖ Juvenile Justice Issues
- ❖ Street Crime/Violent Crime
- ❖ Special Populations (ex. substance abuse and mental health issues)
- ❖ Criminal Justice System Efficiencies
- ❖ Grants/Funding Issues

Other ad hoc committees may be created as necessary.

### **NEXT STEPS**

Creation of the Shelby County Criminal Justice Coordinating Council is an important step in improving our justice system. Although the needs are pressing, the nature of such a council necessitates a methodical approach. It is suggested that the process follow the broad outline below:

1. Presentation of proposal to the County Mayor
2. Presentation of proposal to the Shelby County Commission
3. Preparation of resolution to the County Commission formally establishing the Shelby County Criminal Justice Coordinating Council

### **CONCLUSION**

The need for planning and coordination of our justice system is painfully apparent. It has been recognized by both city and county governments and by the various components of the justice system itself. The size and magnitude of the justice system demand a greater level of coordination than has been achieved in the past. Although the independence of the various components of the justice system must be maintained, the interdependence of these components requires coordination if any reasonable level of efficiency is to be achieved. The Justice Assistance Grant (JAG) Advisory Board offers an established framework from which to construct the Shelby County Criminal Justice Coordinating Council (CJCC). The JAG board has tackled difficult issues in a productive and cooperative way and has the support of both County Government and the criminal justice system. The advantages of converting the JAG board into a broader CJCC is that we move forward from successes already achieved rather than start over from scratch.

Coordination is needed, in fact it is critical. It is time we move forward to address this problem within our system and the creation of a broader Criminal Justice Coordinating Council is our best opportunity to move our criminal justice system forward.



EXHIBIT B

**SHELBY COUNTY  
CRIMINAL JUSTICE COORDINATING COUNCIL  
BYLAWS**

**June 17, 2008**

**Article I: Name**

The name of this body is the Shelby County Criminal Justice Coordinating Council. It will be referred to as the CJCC in the following bylaws.

**Article II: Authority**

The CJCC is authorized by a resolution passed by the Shelby County Commission in 2008. In addition, participating agencies have entered into a Memorandum of Understanding.

**Article III: Mission**

The Shelby County Criminal Justice Coordinating Council exists to improve the administration of justice through planning, research, evaluation, and system-wide coordination of criminal justice activities.

**Article IV: Membership**

There are ten (10) voting members of the CJCC. Membership will be by virtue of position held or by appointment by a representative group as described below:

**Section A: Membership by Position**

There are eleven (11) voting members of the CJCC who are members due to the position they hold. These eleven (11) members serve on the CJCC as long as they occupy their position:

- Administrator, Shelby County Pretrial Services
- Chair, University of Memphis Department of Criminology and Criminal Justice
- District Attorney General
- Director Shelby County Division of Community Services
- Director Shelby County Division of Corrections
- Jail Director
- Sheriff
- President, Memphis Shelby Crime Commission
- Public Defender
- Shelby County Criminal Justice Coordinator
- A member of the judiciary

## **Article V: Meetings**

### **Section A. Regular Meetings**

The CJCC shall meet at least quarterly with meetings scheduled in January, April, July, and October. More frequent meetings may be scheduled at the request of the Chair or by majority vote.

### **Section B. Special Meetings**

Additional or special meetings may be scheduled at the discretion of the Chair.

### **Section C. Designees**

CJCC members may designate one chief staff person to represent them and vote at CJCC meetings. Any member wishing to appoint a designee is to identify the designee in written correspondence addressed to the Chair of the CJCC. Designees can be changed only by notifying the Chair in writing.

### **Section D. Quorum**

A quorum is no less than a simple majority of the total membership including designees. Action may be taken by a majority of those present voting.

## **Article VI: Voting**

Each CJCC member has one vote. Designees may vote on behalf of a member if they have been identified by the member in written correspondence addressed to the Chair.

## **Article VII: Chair**

The initial Chair of the CJCC will be appointed by the Shelby County Mayor and will serve for two years from the date of appointment. A Vice-Chair will be selected by majority vote of the CJCC members and will serve two years. Subsequently, the Chair and Vice Chair of the CJCC will be selected by majority vote of the members and will serve for two years. The Chair and Vice Chair are eligible to be re-elected.

## **Article VIII: Committees**

### **Section A. Purpose**

The purpose of the committee structure of the CJCC is to expedite and facilitate the business of the CJCC. Committees may undertake analyses and develop recommendations on particular topics for consideration of the CJCC. Committees are expected to produce concise and cogent work products.

### **Section B. Committee Structure**

Committees should be large enough to reflect the expertise and perspectives relevant to the substantive areas and technical issues assigned to them, while small enough to insure a timely and responsive work product. Committee assignments will be made by the Chair and efforts will be made to allow CJCC members to serve on committees of their choice. There will be no limit to the number of committees on which a CJCC member shall serve.

Each committee will select a member to serve as committee chairperson. The committee chair will be responsible for scheduling meetings and insuring a timely and responsive work product is submitted to the CJCC.

### **Section C. Standing Committees**

The following standing committees will provide updates/reports/recommendations for each meeting of the CJCC:

- ❖ Shelby County Jail Master Plan Response and Follow Up
- ❖ Juvenile Justice Issues
- ❖ Street Crime/Violent Crime
- ❖ Special Populations (ex. substance abuse and mental health issues)
- ❖ Criminal Justice System Efficiencies
- ❖ Grants/Funding Issues

### **Section D. Ad Hoc Committees**

Ad hoc committees may be created by the Chair as deemed necessary.

### **Article VIII: Amendment of Bylaws**

Proposed amendments to the bylaws are to be included on the agenda of a regularly scheduled meeting. Amendments to the bylaws require three fourths vote of the membership of the CJCC. Any change in bylaws approved by three fourths vote of the membership becomes effective immediately.

Item #

Prepared by: Lou Geater

Approved by:\_\_\_\_\_

RESOLUTION BY THE SHELBY COUNTY BOARD OF COMMISSIONERS TO  
ENCOURAGE THE ELECTED JUDGES OF THE CRIMINAL COURTS, GENERAL  
SESSIONS CRIMINAL COURTS, AND CIVIL COURTS TO COLLABORATE WITH  
THE SHELBY COUNTY SHERIFF TO DEVELOP ALTERNATE COURTROOM  
SECURITY ARRANGEMENTS THAT INCORPORATE THE USE OF PART-TIME  
RETIRED DEPUTY SHERIFFS. SPONSORED BY COMMISSIONER WYATT  
BUNKER.

---

WHEREAS, Court security in Shelby County is the responsibility of the Sheriff and traditionally has been provided through the assignment of a specific number of full-time, permanent deputy sheriffs to each court room; and

WHEREAS, Staffing levels for the various courts has been determined through a collaborative effort between the Sheriff and Judges; and

WHEREAS, the annual cost of court room security for the forty-two separate courts is approximately eight million dollars; and

WHEREAS, Shelby County Government faces significant fiscal challenges for the foreseeable future; and

WHEREAS, This Board of Commissioners deems it necessary to explore opportunities for potential cost savings in all areas County government, including court security; and

WHEREAS, The Sheriff's office has indicated that the use of part-time, retired deputy sheriffs as part of the court security staff complement could result in a cost savings to County government without negatively affecting court security.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Board of Commissioners strongly encourage the Judges to work in a collaborative effort with the Sheriff to develop a security plan that utilizes some number of part-time, retired deputy sheriffs in lieu of full-time deputy sheriffs, thereby reducing the overall cost for courtroom security.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED:\_\_\_\_\_



SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET

CA093325

Referred to Commission Committee 4- Law Enforcement, Fire, Corrections & Courts

For Commission Action on \_\_\_\_\_

DESCRIPTION OF ITEM:

**RESOLUTION APPROVING A CONTRACT AMENDMENT WITH ARAMARK CORRECTIONAL SERVICES INC., IN THE AMOUNT OF \$683,333.00 FOR THE PROVISION OF FOOD SERVICES FOR INMATES AND STAFF AT THE SHELBY COUNTY MAIN JAIL AND JAIL EAST AND THIS ITEM REQUIRES EXPENDITURE OF COUNTY GENERAL FUNDS. SPONSORED BY COMMISSIONER SIDNEY CHISM.**

CHECK ALL THAT APPLY BELOW:

\_\_\_\_\_ This Action does NOT require expenditure of funds.

X This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$683,333.00 ; County CIP Funds- \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_ ; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

Originating Department: \_\_\_\_\_

APPROVAL:

Dept. Head: Soheila Kail 545-2280 \ SK \ 06/25/08  
(Print your name & phone #.) (Initials) (Date)

Elected Official: Sheriff Mark Luttrell 545-5500 \ ML \ 06/25/08  
(Print your name & phone #.) (Initials) (Date)

Division Director: Harvey Kennedy 545-4510 \ HK \ 06/25/08  
(Print your name & phone #.) (Initials) (Date)

CIP - A&F Director: \_\_\_\_\_ \ \_\_\_\_\_ \ \_\_\_\_\_  
(Print your name & phone #.) (Initials) (Date)

Finance Dept: Mike Swift 545-4269 \ MS \ 6/26/08  
(Print your name & phone #.) (Initials) (Date)

County Attorney: Danella Skelton 545-4340 \ DS \ 6-26-08  
(Print your name & phone #.) (Initials) (Date)

CAO/Mayor: JAMES HUNTZICKER \ JH \ 6/26/08  
(Print your name & phone #.) (Initials) (Date)

## SUMMARY SHEET

### **I. Description of Item**

This resolution extends the current contract with ARAMARK for 60 days while we negotiate a new annual contract as a result of the issuance of an RFP and subsequent selection of ARAMARK as continued provider. The 60 day extension will provide ample time to complete negotiations and obtain favorable pricing for the FY 09 contract.

### **II. Source and Amount of Funding**

The amount of \$683,333.00 from FY 08-09  
Operating Budget Account Number  
031-630101-6637, Outside Contract

### **III. Contract Items**

- A. Type Of Contract -- Firm, fixed price
- B. Terms -- 60 days renewal July 1, 2008 to Aug. 31, 2008 with no additional renewals thereafter

### **IV. Additional Information Relevant to Approval of this Item**

#### **I. Description of Item**

Since 2002, ARAMARK has provided an efficient and cost effective means to provide food services for the inmates and employees in the Shelby County Jail located at 201 Poplar and for the past one year at Jail East. The Sheriff's Office is working on the new contract with ARAMARK we need this 60 days renewal to finalize the actual contract.

Shelby County Sheriff's Office recommends approval of this resolution.



ITEM NO: \_\_\_\_\_

PREPARED BY: Soheila Kail

APPROVED BY: 

**RESOLUTION APPROVING A CONTRACT AMENDMENT WITH ARAMARK CORRECTIONAL SERVICES INC., IN THE AMOUNT OF \$683,333.00 FOR THE PROVISION OF FOOD SERVICES FOR INMATES AND STAFF AT THE SHELBY COUNTY MAIN JAIL AND JAIL EAST AND THIS ITEM REQUIRES EXPENDITURE OF COUNTY GENERAL FUNDS. SPONSORED BY COMMISSIONER SIDNEY CHISM.**

---

**WHEREAS,** The Shelby County Sheriff's Office has a continuing need to provide food services for the Shelby County Jail and Shelby County Jail East; and

**WHEREAS,** The current contract for the provision of food services for the Shelby County Jail located at 201 Poplar, Memphis, TN 38103, expires on June 30, 2008, and the parties now desire to renew the original contract for the period July 1, 2008 through August 31, 2008; and

**WHEREAS,** This contract amendment shall be for a period of Sixty (60) days with costs not to exceed \$683,333.00 for both facilities.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** That the contract amendment for the provision of food services in an amount of \$683,333.00 to ARAMARK Correctional Services Inc. for the Shelby County Jail and Jail East is hereby approved.

**BE IT FURTHER RESOLVED,** That the said contract amendment is a Sixty (60) days amendment with no renewals thereafter.

**BE IT FURTHER RESOLVED,** That the County Mayor is hereby authorized to execute said contract amendment on behalf of Shelby County Government for the purposes herein contained, an executed copy of which shall be placed on file in the Contract Administration department.

**BE IT FURTHER RESOLVED,** That funds in the amount of \$683,333.00 are hereby appropriated from FY08/09 Operating Budget Account Number 031-630101-6637, Outside Contracts.

**BE IT FURTHER RESOLVED,** That the Purchasing Department is authorized to issue a purchase order(s) to ARAMARK Correctional Services Inc in the amount of \$683,333.00 for the purpose of the provision of food services for the Shelby County Jail and Jail East.

**BE IT FURTHER RESOLVED,** That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants in an amount not to exceed \$683,333.00 to ARAMARK Correctional Services Inc and to take proper credit in their accounting therefor.

A C Wharton, Jr. , Mayor

Date: \_\_\_\_\_

Attest:

Clerk of County Commission

ADOPTED \_\_\_\_\_

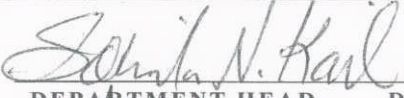

CONTRACT AND ENCUMBRANCE INFORMATION SHEET

\*\*\* AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED \*\*\*

THIS SHEET MUST BE COMPLETED, SIGNED BY THE DEPARTMENT HEAD AND DIVISION DIRECTOR AND ATTACHED TO ALL CONTRACT AND RESOLUTION PACKETS BEFORE ANY ACTIONS WILL BE TAKEN.

1. Department Requesting Services: SHERIFF'S OFFICE
2. Preparer's Name, Telephone #, and E-Mail Address:  
Soheila Kail, 545-2280, Soheila.Kail@shelby-sheriff.org
3. DESCRIPTION OF ITEM TO BE PURCHASED, BUILT, OR SERVICE TO BE PROVIDED:  
Food service for Inmates and Employees of Shelby County Jail at 201 Poplar Ave and Jail East at 6201 Haley Rd.  
CA043325
4. NAME, ADDRESS, VENDOR NUMBER, SOCIAL SECURITY NUMBER, AND/OR FEDERAL I.D. NUMBER OF VENDOR/CONSULTANT/AGENCY WITH WHICH SHELBY COUNTY WILL BE CONTRACTING:  
ARAMARK CORRECTIONAL SERVICES  
1801 SOUTH MEYERS RD. SUITE 300, OAKBROOK TERRACE, IL 60181  
630-568-2500  
VENDOR NO./FED. ID NO. 05418
5. COST OF ITEM OR SERVICE REQUESTED: NOT TO EXCEED \$683,333.00 DOLLARS
6. TERM OF PROPOSED CONTRACT/AGREEMENT: CA043325 July 1, 2008 to Aug. 31, 2008.
7. FUND, ORG, AND ACCOUNT NUMBER (13 DIGITS) \*\* FOR MULTIPLE ACCOUNTS, PLEASE SPECIFY DOLLAR AMOUNT FOR EACH \*\*  
031-630101-6637
8. COMMODITY CODE: \_\_\_\_\_
9. VENDOR/CONSULTANT AGENCY SELECTED BY (CHECK ONE):  
**\*\* PLEASE ATTACH APPROVAL DOCUMENTS \*\***  
a. \_\_\_\_\_ Bid/RFP Process - # & Date \_\_\_\_\_  
b. \_\_\_\_\_ Emergency/Sole Source \_\_\_\_\_
10. LOSB/MBE INFORMATION: Please check the appropriate description  
  
\_\_\_\_\_ MBE (MINORITY OWNED BUSINESS ENTERPRISE)  
\_\_\_\_\_ MALE \_\_\_\_\_ FEMALE  
  
\_\_\_\_\_ WBE (WOMEN OWNED SMALL BUSINESS)  
\_\_\_\_\_ LOSB ( LOCALLY OWNED SMALL BUSINESS)  
ANNUAL SALES DOES NOT EXCEED \$3 MILLION  
  
\_\_\_\_\_ N/A
11. SPECIAL INSTRUCTIONS (ROUTING, FUNDING, BUDGET TRANSFER IN PROCESS)  
RETURN ALL PAPERWORK, PURCHASE ORDER AND CONTRACTS TO SHERIFF'S OFFICE  
PURCHASING, ROOM 9-16.

REVIEWED AND APPROVED BY:

  
DEPARTMENT HEAD      DATE 6/17/08  
  
DIVISION DIRECTOR      DATE 6-18-08



16 November 2007

Via Federal Express

Soheila Kail  
Business Manager  
Shelby County Sheriff's office  
201 Poplar Avenue  
Memphis, TN 38103

***Re: Amendment for 2mth Extension  
(Food Contract) between Shelby County Government  
and ARAMARK Correctional Services, LLC..***

Ms. Kail:

Attached please find four (4) originals of the Amendment to add Jail East which has been executed on behalf of ARAMARK Correctional Services.

Once the Amendment is fully executed, please have one original returned to me as follows:

Contract Administrator  
ARAMARK Tower  
1101 Market Street, 29<sup>th</sup> flr  
Philadelphia, PA 19107

Should you have any questions/concerns please ring me on 215.238.3270.

Sincerely,

A handwritten signature in cursive script that reads "RonicaAlexzandra Mangini".

RonicaAlexzandra Mangini  
Contract Administrator

Attachment



## **Amendment to Agreement**

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Shelby County Government (hereinafter "County") and ARAMARK Correctional Services, LLC, formerly ARAMARK Correctional Services, Inc. (hereinafter "ARAMARK").

WHEREAS, the parties previously entered into an Agreement (hereinafter "Agreement") dated July 1, 2002, for provision of the food service at the Shelby County Justice Center located at 201 Poplar Ave and Jail East at 6201 Haley Rd.

WHEREAS, the parties now desire to enter into this Amendment for sixty (60) days renewal period beginning July 1, 2008, to September 1, 2008.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. The Agreement between the parties is hereby renewed for the period beginning July 1, 2008, until Sept. 1, 2008.
2. The cost for this sixty (60) day renewal period shall not exceed SIX HUNDRED EIGHTY THREE THOUSAND THREE HUNDRED THIRTY THREE AND 00/100 (\$683,333.00) Dollars payable in accordance with the terms of the Agreement.
3. This Amendment shall be subject to and contingent upon adoption of the Fiscal Year 2008-2009 Operating Budget of Shelby County Government by the Board of County Commissioners.
4. The terms and conditions of the original Agreement, except as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement on the

\_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

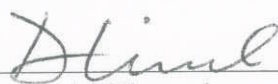
APPROVED:

SHELBY COUNTY GOVERNMENT

  
Contract Administrator  
Assistant County Attorney

\_\_\_\_\_  
A C WHARTON, JR., MAYOR

ARAMARK Correctional Services, LLC.

By:   
David Kimmel  
Title: Vice President, Finance


CORPORATE ACKNOWLEDGMENT

(Note: To be used if the contracting party is a Corporation and is to be placed after the signature lines.)

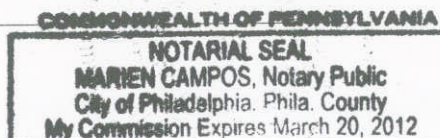
STATE OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_ the within named bargainor, a corporation, and that he as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

WITNESS my hand and official seal at office this 12<sup>th</sup> day of June, 2008.

  
Notary Public

My Commission Expires: \_\_\_\_\_





CA096888

SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET

Referred to Commission Committee: \_\_\_\_\_

For Commission Action on: \_\_\_\_\_

DESCRIPTION OF ITEM:

RESOLUTION REQUESTING APPROVAL OF A CONTRACT WITH THE CITY OF MEMPHIS IN THE FY09 SHELBY COUNTY OPERATING BUDGET IN THE AMOUNT OF \$100,000 FOR OUTSIDE CONTRACTS FOR THE SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE FOR THE SHELBY COUNTY ANTI-GANG INITIATIVE AND THE FY07 PROJECT SAFE NEIGHBORHOODS. THIS ITEM REQUIRES EXPENDITURE OF FEDERAL GRANT FUNDS IN THE AMOUNT OF \$100,000.

SPONSORED BY COMMISSIONER SIDNEY CHISM.

CHECK ALL THAT APPLY BELOW:

\_\_\_\_\_ This Action does NOT require expenditure of funds.

X This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_; County CIP Funds- \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ 100,000

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

Originating Department: Shelby County District Attorney General's Office

APPROVAL:

Dept. Head: \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Elected Official: Priscilla C. Campbell 545-5955 PC 07/01/08  
(Type your name & phone #.) (Initials) (Date)

Division Director: \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CIP - A&F Director: \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Finance Dept. Mike Swift 545-4269 MS 7/9/08  
(Type your name & phone #.) (Initials) (Date)

County Attorney: Mary L. Bright 4963 MLB 7/9/08  
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: James F. Huntzicker 545-4514 JFH 7/10/08  
(Type your name & phone #.) (Initials) (Date)

## SUMMARY SHEET

I. Description of Item:

Requesting approval of a contract with the City of Memphis, in an amount of \$100,000 for Outside Contracts for the Shelby County District Attorney General's Office for the Shelby County Anti-Gang Initiative/FY07 Project Safe Neighborhood. We are requesting to amend the FY09 Shelby County Operating Budget.

II. Source and Amount of Funding:

The Department of Justice in the amount of \$100,000.

III. Additional Information Relevant to Approval of This Item:

Contract Agreement between the Shelby County District Attorney General's Office and City of Memphis, Tennessee.

Item No. \_\_\_\_\_

Prepared by Dana Dockery

Commissioner \_\_\_\_\_

Approved MB

**RESOLUTION REQUESTING APPROVAL OF A CONTRACT WITH THE CITY OF MEMPHIS IN THE FY09 SHELBY COUNTY OPERATING BUDGET IN THE AMOUNT OF \$100,000 FOR OUTSIDE CONTRACTS FOR THE SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE FOR THE SHELBY COUNTY ANTI-GANG INITIATIVE AND THE FY07 PROJECT SAFE NEIGHBORHOODS. THIS ITEM REQUIRES EXPENDITURE OF FEDERAL GRANT FUNDS IN THE AMOUNT OF \$100,000. SPONSORED BY COMMISSIONER SIDNEY CHISM.**

**WHEREAS**, the Shelby County District Attorney General's Office has been awarded \$148,523 for the FY07 Project Safe Neighborhood by the Department of Justice for September-1, 2007 through August 31, 2010; and

**WHEREAS**, the City of Memphis Police Department on behalf of the Project Safe Neighborhood Unit, hereinafter called the PSN Unit, is a sub-recipient and has been awarded \$100,000 from the Grantor for overtime and equipment; and

**WHEREAS**, this activity has been determined to meet the criteria set forth under the Shelby County Anti-Gang Initiative; and

**WHEREAS**, the contract is based upon a three year agreement at a cost of \$100,000; and

**WHEREAS**, funds are available in the FY 2008/2009 Operating Budget Account Number 333-709001-6637 Outside Contracts.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, that the expenditure of funds for Outside Contracts in the amount of \$100,000 to the City of Memphis, for the Shelby County District Attorney General's Office is hereby approved.

**BE IT FURTHER RESOLVED**, that funds in the amount of \$100,000 are hereby, appropriated from FY 2008/2009 Operating Budget Account Number 333-709001-6637 Outside Contracts.

**BE IT FURTHER RESOLVED**, that the Purchasing Department is authorized to issue a purchase order to the City of Memphis in the amount of \$100,000 for the purpose of Outside Contracts for the Shelby County Anti-Gang Initiative/FY07 Project Safe Neighborhoods for the Shelby County District Attorney General's Office.

**BE IT FURTHER RESOLVED**, That the County Mayor and the Director of Finance and Administration are hereby authorized to issue their warrant or warrants in an amount not exceed \$100,000 to the City of Memphis and to take proper credit in their accounting thereof.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of County Commission

Adopted: \_\_\_\_\_



**LETTER OF AGREEMENT  
BETWEEN  
SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE  
AND  
CITY OF MEMPHIS, TENNESSEE**

**THIS AGREEMENT**, made and entered into by and between the City of Memphis, Tennessee, acting through the Memphis Police Department, with principal offices at 201 Poplar, 12-00, Memphis, Tennessee 38103, as party of the first part, hereinafter called "City" or "Grantee," and the Shelby County District Attorney General's Office, with principal offices located at 201 Poplar Avenue, Suite 301, Memphis, TN 38 103, as party of the second part, hereinafter called the "Grantor."

**WITNESSETH:**

**WHEREAS**, the Grantor has received \$148,523.00 from the Department of Justice to be used for activities eligible under the Shelby County Anti-Gang Initiative; and

**WHEREAS**, the City of Memphis Police Department on behalf of the Project Safe Neighborhood Unit, hereinafter called the PSN Unit, is a sub-recipient and has been awarded \$100,000.00 from the Grantor for overtime and equipment; and

**WHEREAS**, this activity has been determined to meet the criteria set forth under the Shelby County Anti-Gang Initiative; and

**NOW THEREFORE**, premises considered, the parties of this Agreement for consideration set forth below, do here and now agree and bind themselves to the following terms and conditions:

**PROJECT DESCRIPTION**

The PSN Unit reviews each arrest where a person is arrested with a firearm. The objective is to learn if the person has ever been convicted of a felony crime anywhere in the United States. If the arrested person is a convicted felon, a packet is prepared containing extensive background information about the person. The packet is presented to a representative of the United States Attorney's Office (USA) and to the Shelby County District Attorney's Office (SCDA). This is done at a scheduled weekly meeting. A decision is made whether or not this case will be accepted into the PSN initiative. If accepted, the case may be prosecuted directly in federal court or the SCDA can make an offer in state court that, if accepted, will result in the USA declining prosecution. If the person refuses to plead to the offer, the case is dismissed by the SCDA and the USA indicts the person. The PSN Unit currently reviews arrests in Memphis, Bartlett, Millington, Germantown, Collierville and Shelby County.

The PSN Unit also investigates cases that involve persons that buy or supply firearms to convicted felons. The unit investigates reports where charges could later be filed against a person suspected of possessing firearms as a convicted felon. They work very closely with Alcohol, Tobacco, and Firearms (ATF) and the Tennessee Bureau of Investigation (TBI). The unit attempts to identify firearm suppliers that are acting illegally. It actively works with informants

in an attempt to reach its goal of reducing illegal firearms on the streets of Shelby County, Tennessee.

## **TERM OF AGREEMENT**

The term of this Agreement shall commence on September 1, 2007, and end on August 31, 2010, unless otherwise extended in writing by both parties. Only eligible expenses incurred during this period or any extension shall be reimbursed. The last date to submit expenses for reimbursement shall be August 31, 2010, or any date otherwise agreed upon in a written extension. All costs will be paid on a reimbursement basis.

## **BUDGET**

The Grantor shall provide up to \$100,000.00 in funds to the City for eligible expenses as set forth in Attachment A. Any revision of the budget, as set forth in Attachment A, whether in the budget amount or the use of funds, is subject to prior written approval by the Grantor.

## **CITY REQUIREMENTS**

1. The City shall submit a reimbursement request once a month for expenses incurred in each budget category as outlined per the attached Budget Summary (Attachment A). Only expenses delineated in each budget category are allowable.
2. With written prior approval by the Grantor, the City may make budgetary revisions consistent with program needs as long as total funding remains unaffected. Reimbursement is only allowed for the cost of procuring goods, materials, supplies, equipment or travel when such procurement is made on a competitive basis, where applicable, including the use of competitive bidding procedures.
3. The City agrees to be responsible for the accountability of equipment purchased with funds provided under this Agreement, in which the Grantor retains an interest, as described below:
  - a. The City shall identify all equipment purchased in its reimbursement request.
  - b. The City shall maintain accounting records for all equipment purchased to include the following:
    - i. Equipment Description
    - ii. Date of Purchase
    - iii. Equipment Costs
    - iv. Location
  - c. The City shall take legal title to all equipment purchased, subject to the Grantors equitable interest therein, to the extent that it is prorated, based upon the Grantor's contribution to the purchase price, and to the extent that such is permitted pursuant to the Department of Justice Grant.
  - d. The City shall request written approval from the Grantor for any proposed disposition of equipment.
  - e. The City shall notify the Grantor, in writing, of any equipment loss describing reason(s) for the loss.
  - f. Upon termination of funding where a further contractual relationship is not entered into, all equipment shall be disposed of in one of the following ways:



- i. Equipment may be returned to the Grantor or transferred to any party designated by the Grantor by refunding to the City the prorated amount of the residual value based price, or
  - ii. Equipment may be retained, by the City through an agreement whereby the Grantor maintains control over the jurisdiction, utilization, and final dispositions of equipment; or
  - iii. In such other manner as parties may agree to from among alternatives approved by the Grantor.
- g. Should the equipment be destroyed, lost or stolen, the City shall be responsible to the Grantor for the prorated amount of the residual value at the time of loss based upon the Grantor's original contribution to the purchase price. If there is any stolen equipment, a copy of a police report must be submitted to the Shelby County District Attorney General's Office at 201 Poplar Avenue, Suite 301 Memphis, Tennessee 38103.
- h. The Grantor shall reimburse the City on a monthly basis in the amounts stipulated in the attached Budget Summary (Attachment A). The Grantor shall not be liable for any expenses incurred by the City in excess of those stipulated in each budget category contained in the proposal. Compensation to the City for travel, meals, and/or lodging within the scope of service for this Agreement shall be in the amount of actual costs to the City, subject to the maximum amounts and all limitations specified in the City's Travel Regulation, as this may from time to time be amended.

#### **STANDARD TERMS AND CONDITIONS**

1. The City shall maintain confidential client records documenting services provided and progress made of all clients in the program. All information obtained on clients in the program shall be confidential and shall be shared professionally only with the authorization of the client's representative. The City shall provide complete access to said records to the Grantor's personnel who are authorized by the Grantor to receive confidential information.
2. The City agrees to submit documentation, budget revisions and other information which shows that funds are being utilized solely for the purpose of maintaining the operations of the Project Safe Neighborhood Unit as outlined by the Memphis Police Department.
3. The City shall not assign this Agreement or enter into a sub-grant or sub-contractual agreement for any of the services performed under this Agreement without obtaining the prior written approval by the Grantor.
4. The City covenants that it has no public or private interest and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The City warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the Memphis Police Department as wages, compensation or gifts in exchange for acting as officer, agent, employee, sub-contractor or consultant to the City in connection to any work contemplated or performed relative to this Agreement.
5. The City warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the City to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the City, any fee, commission, percentage, brokerage fee, gift or other



consideration. For breach or violation, of this warranty, the Grantor will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

6. During all phases of the work and services to be provided hereunder, the City agrees to permit duly authorized agents and employees of the Grantor to enter the City offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The City shall maintain documentation for all changes against the Grantor under this Agreement. The books, records and documents of the City's, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Grantor or their duly appointed representatives
7. The Grantor may terminate the Agreement upon thirty (30) days written notice by the Grantor of the City's failure to provide the services specified under this Agreement. Either party may terminate this Agreement by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the City shall be entitled to receive compensation for any satisfactory work performed as of the termination date.
8. The City certifies that it is qualified to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. The City is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the City agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the County of the Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the County of the State of Tennessee located in Shelby County, Tennessee.
9. The City agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation, in, or be denied benefits to or be otherwise subject to discrimination in the performance of this Agreement, or in the employment practices of the City. The City shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

## **FEDERAL REQUIREMENTS**

1. If federal funds are used to procure goods, materials or services, the City shall comply with all federal regulations in the performance of its duties under this Agreement, including the federal procuring requirements set forth in Title 41 of the Code of Federal Regulations, Subpart 1-15.2 through Subpart 15.8 relative to public Agreements and property management.
2. The City certifies to the best of its knowledge and belief that:  
  
No federally appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of any agency,



or a Member of Congress in connection with the awarding of any federal Agreement, the making of any federal grant; the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Agreement, grant loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the City shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Grantor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontractors, and Agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

3. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
4. This Agreement maybe modified or amended, only if amendment is made in writing and signed by both parties.
5. If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provisions shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid and enforceable.
6. The City shall perform upon the request of the Grantor any or all of the scope of services, as well, as any or all of the general responsibilities, as well as submit to the Grantor's limitations and liabilities, under the State of Tennessee Multi-Services Grant Agreement, the entirety of which is incorporated herein by reference as stated verbatim. It is understood and agreed between the parties that should any of the terms or conditions of this Agreement or its amendments conflict with terms and conditions of the Multi-Services Grant Agreement or its amendments the terms and conditions of the Multi-Services Agreement and its amendment shall control.
7. The City agrees that it will maintain a drug free workplace in accordance with the requirements of 28 CFR Part 67, and shall administer a policy for drug and alcohol free facilities.
8. The City agrees that no funds will be used directly or indirectly to award Agreements to, employ, or engage the services of any Agreement or during any period of debarment, suspension, or placement in ineligibility status under the provisions of 28 CFR Part 67.
9. In accordance with requirements set forth in 28 CFR Parts 66 and 70, all financial records, supporting documents, statistical records, and all other records pertinent to the award shall be retained by the City for at least three (3) years following the closure of their most recent audit

report. The three-year retention period starts when the single audit report covering the grant period is submitted.

10. The City gives the right of access to their records for the review to any federal, state, and/or local representative of the bureau of Justice Assistance.

## SANCTIONS


The Grantor may perform one or both of the following actions if the City fails to comply with terms and conditions of this Agreement.


1. Temporarily withhold reimbursement payments pending the correction(s) of monitor or audit findings.
2. Withhold future awards for the project or agency.

## TERMINATION

The Grantor may terminate this Agreement in whole in accordance with 28 CFR 70.61, when the City materially fails to comply with the terms and conditions of this agreement. The Grantor shall provide the City in writing a notice of termination. In the event the Grantor terminates this Agreement, the Grantor will reimburse the City the full amount of the funds received from the City. The City will be subject to the same requirements regarding audit, recordkeeping, and submission of reports for the duration of the Agreement period.

**IN WITNESS WHEREOF**, the parties below acknowledge this agreement on the date first written above.

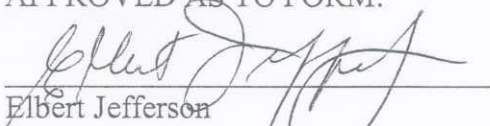
  
Dr. Willie W. Herenton  
Mayor, City of Memphis

  
William L. Gibbons  
District Attorney General

  
Larry A. Godwin  
Director, Police Services

  
AC Wharton  
Mayor, Shelby County

APPROVED AS TO FORM:

  
Elbert Jefferson  
City Attorney, City of Memphis

ATTEST:

  
Comptroller/Deputy Comptroller



## ATTACHMENT A

### PSN Project Budget

#### 2007 Project Safe Neighborhoods (PSN) Budget Narrative:

In response to gun crime and gun violence in Memphis and Shelby County, the Memphis Police Department (MPD) Project Safe Neighborhoods (PSN) Unit was created in 2002. Currently the PSN Unit is staffed with two (2) Lieutenants as supervisors; twelve (12) MPD investigators and two (2) Shelby County Sheriff's Office investigators.

The 2007 proposed budget supports specific PSN goals and objectives including the primary goal of reducing violent crimes committed with guns in Shelby County. Specific PSN objectives will be accomplished through increased enforcement and investigations designed to confiscate guns and combat violent crime committed with guns.

**A. Personnel**                      **\$0**

**B. Fringe Benefits**              **\$0**

**C. Travel**                          **\$20,000**

Estimated travel and training budget includes 1) costs for investigators to attend the annual PSN Conference for two years; 2) costs for investigators to attend Crime Scene Trainings/Workshops to prepare and equip officers for court testimony involving gun crimes; and 3) costs for Technical Training/Workshops to train investigators on surveillance equipment.

**D. Equipment**                    **\$72,500**

Estimated equipment budgeted includes 1) two vehicles to be utilized in an under cover capacity by PSN investigators assigned to the PSN Unit for the purpose of increased enforcement and investigations; 2) equipment specific to under cover police vehicles including alarms designed to protect the vehicle and equipment contained within the vehicle; 3) miscellaneous equipment designed to aid investigations and enforcement activities to reduce gun crime and violence to include, but not limited to search warrant entry tools, computer enhancement equipment, crime scene and evidence documentation equipment, and evidence collection equipment.

**E. Supplies**                      **\$ 7,500**

Supplies include standard office materials/supplies and supplies specific to increased enforcement and investigations specifically related to PSN goals and objectives.

**F. Indirect Costs**                **\$0**

**Total Project Costs:**          **\$100,000.00**



Department of Justice  
Office of Justice Programs  
Bureau of Justice Assistance

Grant

PAGE 1 OF 3

1. RECIPIENT NAME AND ADDRESS (including Zip Code)

Shelby County District Attorney General  
201 Poplar Avenue, Suite 301  
Memphis, TN 38103

4. AWARD NUMBER: 2007-GP-CX-0071

5. PROJECT PERIOD: FROM 09/01/2007 TO 08/31/2010

BUDGET PERIOD: FROM 09/01/2007 TO 08/31/2010

6. AWARD DATE 09/06/2007

7. ACTION

1A. GRANTEE IRS VENDOR NO

626000641

8. SUPPLEMENT NUMBER

00

Initial

9. PREVIOUS AWARD AMOUNT

\$ 0

3. PROJECT TITLE

PSN

10. AMOUNT OF THIS AWARD

\$ 148,523

11. TOTAL AWARD

\$ 148,523

12. SPECIAL CONDITIONS

THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).

13. STATUTORY AUTHORITY FOR GRANT

This project is supported under Pub. L. 110-5, embedded secs. 101-104, Pub. L. 109-106, 119 Stat. 2290, 2302 (BJA - PSN).

15. METHOD OF PAYMENT

PAPRS

AGENCY APPROVAL

GRANTEE ACCEPTANCE

16. TYPED NAME AND TITLE OF APPROVING OFFICIAL

Regina B. Schofield  
Assistant Attorney General

18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL

Priscilla Campbell  
Chief Administrative Officer

17. SIGNATURE OF APPROVING OFFICIAL

*Regina B. Schofield*

19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

*Priscilla Campbell*

19A. DATE

9/20/07

AGENCY USE ONLY

20. ACCOUNTING CLASSIFICATION CODES

FISCAL YEAR	FUND CODE	BUD ACT	DIV. OFC.	REG	SUB.	POMS	AMOUNT
X	C	GP	80	00	00		148523

21. GP07U00077



Department of Justice  
Office of Justice Programs  
Office of Comptroller

Washington, D.C. 20531

September 6, 2007

Dr. Priscilla Campbell  
Shelby County District Attorney General  
201 Poplar Avenue, Suite 301  
Memphis, TN 38103

Reference Grant Number: 2007-GP-CX-0071

Dear Dr. Campbell:

I am pleased to inform you that my office has approved the following budget categories for the aforementioned grant award in the cost categories identified below:

Category	Budget
Personnel	\$25,194
Fringe Benefits	\$4,806
Travel	\$3,523
Equipment	\$0
Supplies	\$0
Construction	\$0
Contractual	\$115,000
Other	\$0
Total Direct Cost	\$148,523
Indirect Cost	\$0
Total Project Cost	\$148,523
Federal Funds Approved:	\$148,523
Non-Federal Share:	\$0
Program Income:	\$0





Department of Justice  
Office of Justice Programs  
Bureau of Justice  
Assistance

AWARD CONTINUATION  
SHEET  
Grant

PAGE 2 OF 3

PROJECT NUMBER 2007-GP-CX-0071

AWARD DATE 09/06/2007

*SPECIAL CONDITIONS*

1. The recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide.
2. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 C.F.R. Section 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the recipient is in compliance.
3. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, as further described in the current edition of the OJP Financial Guide, Chapter 19.
4. Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of OJP.
5. The grantee agrees to secure and maintain on file signed statements by each member of the selection committee appointed by the United States Attorney or the PSN Task Force indicating that in making recommendations or decisions regarding contracts or subgrants paid for by this grant, the member had no conflict of interest. Such statements must include all of the language included in the PSN Conflict of Interest Certification, however, the grantee may use a different format or may add other related certifications of their own.
6. The recipient agrees to submit to BJA for review and approval any curricula, training materials, or any other written materials that will be published, including web-based materials and web site content, through funds from this grant at least thirty (30) working days prior to the targeted dissemination date.
7. To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdiction, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the grantee can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.
8. The recipient agrees to coordinate the project with the U.S. Attorney and Project Safe Neighborhoods Task Force for the district covered by the award. The recipient also is encouraged to coordinate with other community justice initiatives (such as Weed & Seed and ATF's Youth Crime Gun Interdiction Initiative), and other ongoing, local gun prosecution and law enforcement strategies.
9. The award recipient agrees to participate in a data collection process measuring program outputs and outcomes. The data elements for this process will be outlined by the Office of Justice Programs.
10. The recipient agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per 28 C.F.R. 23.20(g). Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 42 U.S.C. 3789g(c)-(d). Recipient may not satisfy such a fine with federal funds.
11. The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

ACC



Department of Justice  
Office of Justice Programs  
Bureau of Justice  
Assistance

AWARD CONTINUATION  
SHEET  
Grant

PAGE 3 OF 3

PROJECT NUMBER 2007-GP-CX-0071

AWARD DATE 09/06/2007

*SPECIAL CONDITIONS*

12. Grantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
13. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.
14. "Applicants must certify that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov)."
15. The recipient agrees to submit quarterly financial status reports to the Office of Justice Programs using Standard Form SF 269A on the Internet at <https://grants.ojp.usdoj.gov>. These reports shall be submitted on-line not later than 45 days after the end of each calendar quarter. The final report shall be submitted not later than 90 days following the end of the grant period.
16. The recipient shall submit semiannual progress reports. Progress reports shall be submitted within 30 days after the end of the reporting periods, which are June 30 and December 31, for the life of the award. These reports will be submitted to the Office of Justice Programs, on line-through the Internet at <https://grants.ojp.usdoj.gov>.
17. The recipient agrees to submit to DOJ for review and approval, any proposal or plan for Project Safe Neighborhoods and Anti-Gang Initiative media-related outreach. DOJ approval must be received prior to any obligation or expenditure of grant funds related to the development of media-related outreach projects.



Department of Justice  
Office of Justice Programs  
*Bureau of Justice Assistance*

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Washington, D.C. 20531

Memorandum To: Official Grant File

From: Maria Berry, Environmental Coordinator

Subject: Categorical Exclusion for Shelby County District Attorney General

Awards under the FY 2007 Project Safe Neighborhoods grant program will be used to fund innovative ideas in reducing gun violence and will carry the following NEPA special condition:

None of the following activities will be conducted either under the OJP federal action or a related third party action: 1) New construction; 2) Any renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year flood plain; 3) A renovation which will change the basic prior use of a facility or significantly change its size; 4) Research and technology whose anticipated and future application could be expected to have an effect on the environment; or 5) Implementation of a program involving the use of chemicals. Consequently, the subject federal action meets OJP's criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of the Code of Federal Regulations. Additionally, the proposed action is neither a phase nor a segment of a project which when viewed in its entirety would not meet the criteria for a categorical exclusion.



Department of Justice  
Office of Justice Programs  
Bureau of Justice Assistance

GRANT MANAGER'S MEMORANDUM, PT. I:  
PROJECT SUMMARY

Grant

PROJECT NUMBER

2007-GP-CX-0071

PAGE 1 OF 1

This project is supported under Pub. L. 110-5, embedded secs. 101-104, Pub. L. 109-108, 119 Stat. 2290, 2302 (BJA - PSN)

1. STAFF CONTACT (Name & telephone number)

Shauna Connolly  
(202) 253-0019

2. PROJECT DIRECTOR (Name, address & telephone number)

Priscilla Campbell  
201 Poplar Avenue, Suite 301  
Memphis, TN 38103  
(901) 545-5055

3a. TITLE OF THE PROGRAM

BJA FY 07 Project Safe Neighborhoods

3b. POMS CODE (SEE INSTRUCTIONS  
ON REVERSE)

4. TITLE OF PROJECT

PSN

5. NAME & ADDRESS OF GRANTEE

Shelby County District Attorney General  
201 Poplar Avenue, Suite 301  
Memphis, TN 38103

6. NAME & ADDRESS OF SUBGRANTEE

7. PROGRAM PERIOD

FROM: 09/01/2007 TO: 08/31/2010

8. BUDGET PERIOD

FROM: 09/01/2007 TO: 08/31/2010

9. AMOUNT OF AWARD

\$ 148,523

10. DATE OF AWARD

09/06/2007

11. SECOND YEAR'S BUDGET

12. SECOND YEAR'S BUDGET AMOUNT

13. THIRD YEAR'S BUDGET PERIOD

14. THIRD YEAR'S BUDGET AMOUNT

15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse)

Project Safe Neighborhoods (PSN), a nationwide commitment to reducing gun crime, links existing local programs together and provides them with necessary tools. PSN 1) takes a hard line against gun criminals, using every available means to create safer neighborhoods; 2) seeks to achieve heightened coordination among federal, state, and local law enforcement; and 3) emphasizes tactical intelligence gathering, more aggressive prosecutions, and enhanced accountability through performance measures. The United States Attorney in each federal judicial district will lead the offensive. The fiscal agent, in coordination with the PSN Task Force, will allocate funds throughout the community.

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The Shelby County District Attorney General's Office will use the FY07 PSN funds to continue their "Gun Crime Is Jail Time" and "No Deals" initiatives. The Western District of Tennessee will fund two cross-designated assistant prosecutors for the Shelby County District Attorney General's Office. They will be dedicated to firearm-related cases. The Memphis Police Department will purchase vehicles, equipment, and training for the investigation and enforcement of felons who illegally possess guns; the Jackson Police Department will co-sponsor training on street gang investigations, PSN and gang prosecution techniques, and an overview of the PSN initiative, as well as fund training for its officers on armed gunman characteristics; and a local firm will purchase television time and billboard space to advertise the "Gun Crime Is Jail Time" and "No Deals" messages.

NCA/NCF

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CA094540

SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET

Referred to Commission Committee: \_\_\_\_\_

For Commission Action on: \_\_\_\_\_

DESCRIPTION OF ITEM:

RESOLUTION REQUESTING APPROVAL OF A BUDGET AMENDMENT IN THE FY09 SHELBY COUNTY OPERATING BUDGET IN THE AMOUNT OF \$78,500 FOR THE SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE FOR THE SHELBY COUNTY ANTI-GANG INITIATIVE. THIS ITEM REQUIRES EXPENDITURE OF FEDERAL GRANT FUNDS IN THE AMOUNT OF \$78,500.

SPONSORED BY COMMISSIONER SIDNEY CHISM.

CHECK ALL THAT APPLY BELOW:

\_\_\_\_\_ This Action does NOT require expenditure of funds.

X This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_; County CIP Funds- \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ 78,500

Other funds (Specify source and amount): \$ \_\_\_\_\_

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

Originating Department: Shelby County District Attorney General's Office

APPROVAL:

Dept. Head: \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Elected Official: Priscilla C. Campbell 545-5955 PC 07/01/08  
(Type your name & phone #.) (Initials) (Date)

Division Director: \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

CIP - A&F Director: \_\_\_\_\_  
(Type your name & phone #.) (Initials) (Date)

Finance Dept. Mike Swift 545-4269 MS 7/9/08  
7/9/08 (Type your name & phone #.) (Initials) (Date)

County Attorney: Mary L. Bright x4963 mlb 7/8/08  
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: James F. Huntzicker 545-4514 JFH 7/10/08  
(Type your name & phone #.) (Initials) (Date)



## SUMMARY SHEET

I. Description of Item:

Requesting approval of a budget amendment in an amount of \$78,500 for the Shelby County District Attorney General's Office for the Shelby County Anti-Gang Initiative. We are requesting to amend the FY09 Shelby County Operating Budget.

II. Source and Amount of Funding:

The Department of Justice in the amount of \$78,500.

III. Additional Information Relevant to Approval of This Item:

Contract between the Shelby County District Attorney General's Office and the City of Memphis is attached.

Contract and Encumbrance Information Sheet is attached.

Item No. \_\_\_\_\_

Prepared by Dana Dockery

Commissioner \_\_\_\_\_

Approved: 

**RESOLUTION REQUESTING APPROVAL OF A BUDGET AMENDMENT IN THE FY09 SHELBY COUNTY OPERATING BUDGET IN THE AMOUNT OF \$78,500 FOR THE SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE FOR THE SHELBY COUNTY ANTI-GANG INITIATIVE. THIS ITEM REQUIRES EXPENDITURE OF FEDERAL GRANT FUNDS IN THE AMOUNT OF \$78,500. SPONSORED BY COMMISSIONER SIDNEY CHISM.**

**WHEREAS**, the Shelby County District Attorney General's Office has been awarded \$213,382 for the Shelby County Anti-Gang Initiative by the Department of Justice for October 1, 2006 through September 30, 2008; and

**WHEREAS**, the City of Memphis Police Department on behalf of the Project Safe Neighborhood Unit, hereinafter called the PSN Unit, is a sub-recipient and has been awarded \$78,500 from the Grantor for overtime and equipment; and

**WHEREAS**, this activity has been determined to meet the criteria set forth under the Shelby County Anti-Gang Initiative; and

**WHEREAS**, the contract is based upon a two year agreement at a cost of \$78,500.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, that the expenditure of funds for Outside Contracts in the amount of \$78,500 to the City of Memphis, for the Shelby County District Attorney General's Office is hereby approved.

**BE IT FURTHER RESOLVED**, that the FY09 Shelby County operating budget is hereby amended and funds appropriated as per Exhibit A.

**BE IT FURTHER RESOLVED**, that the Purchasing Department is authorized to issue a purchase order to the City of Memphis in the amount of \$78,500 for the purpose of Outside Contracts for the Shelby County Anti-Gang Initiative for the Shelby County District Attorney General's Office.

**BE IT FURTHER RESOLVED**, that the County Mayor and the Director of Finance and Administration are hereby authorized to issue their warrant or warrants in an amount not exceed \$78,500 to the City of Memphis and to take proper credit in their accounting thereof.

\_\_\_\_\_  
A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of County Commission

Adopted: \_\_\_\_\_

## EXHIBIT A

SHELBY COUNTY GOVERNMENT  
BUDGET AMENDMENT  
FY2009

Acct No	Current Budget	Adjustment	Budget as Amended
<u>208-709001 District Attorney General</u>			
FY06 Project Safe Neighborhoods Program			
4401 Federal Grants	\$0.00	(\$78,500.00)	(\$78,500.00)
6637 Outside Contracts	\$0.00	\$78,500.00	\$78,500.00
Net Operations	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

CONTRACT AND ENCUMBRANCE INFORMATION SHEET  
\*\*\*AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED\*\*\*

THIS SHEET MUST BE COMPLETED, SIGNED BY THE DEPARTMENT HEAD AND DIVISION DIRECTOR AND ATTACHED TO ALL CONTRACT AND RESOLUTION PACKETS BEFORE ANY ACTION WILL BE TAKEN.

1. Department Requesting Services: District Attorney General's Office
2. Preparer's Name, Telephone #, and E-Mail Address:  
Mary Cook, 545-5953 Mary.Cook@scdag.com
3. DESCRIPTION OF ITEM TO BE PURCHASED, BUILT, OR SERVICE TO BE PROVIDED:  
Equipment for training, travel and overtime of MPD's PSN Unit.
4. NAME, ADDRESS, VENDOR NUMBER, SOCIAL SECURITY NUMBER, AND/OR FEDERAL I.D. NUMBER OF VENDOR/CONSULTANT/AGENCY WITH WHICH SHELBY COUNTY WILL BE CONTRACTING:  
Memphis Police Department  
201 Poplar Avenue, Suite 1008  
Memphis, TN 38103  
VENDOR NO./FED. ID NO. 17830
5. COST OF ITEM OR SERVICE REQUESTED: \$78,500.00
6. TERM OF PROPOSED CONTRACT/AGREEMENT: October 1, 2006 - September 30, 2008
7. FUND, ORG, AND ACCOUNT NUMBER (13 DIGITS) \*\*FOR MULTIPLE ACCOUNTS, PLEASE SPECIFY DOLLAR AMOUNT FOR EACH\*\*  
208-709001-6637
8. COMMODITY CODE: Enc 00
9. VENDOR/CONSULTANT/AGENCY SELECTED BY (CHECK ONE):  
\*\*PLEASE ATTACH APPROVAL DOCUMENTS\*\*  
a.        Bid/RFP Process - # & Date        Grant  
b.   X   Emergency/Sole Source
10. LOSB/MBE INFORMATION: Please check the appropriate description  
       MBE (MINORITY OWNED BUSINESS ENTERPRISE)  
                 MALE        FEMALE  
       WBE (WOMEN OWNED BUSINESS ENTERPRISE)  
       LOSB (LOCALLY OWNED SMALL BUSINESS)  
          ANNUAL SALES DOES NOT EXCEED \$3 MILLION  
  X   N/A
11. SPECIAL INSTRUCTIONS (ROUTING, FUNDING, BUDGET TRANSFER IN PROCESS)

REVIEWED AND APPROVED BY:

DEPARTMENT HEAD

DATE

At Campbell  
DIVISION DIRECTOR

DATE



## OFFICE OF THE DISTRICT ATTORNEY GENERAL

30<sup>th</sup> JUDICIAL DISTRICT ~ SHELBY COUNTY, TENNESSEE  
201 Poplar Avenue, Third Floor, Memphis, TN 38103-1947  
Tel. 901-545-5900 ~ Fax 901-545-3937

[www.scdag.com](http://www.scdag.com)

WILLIAM L. GIBBONS  
*District Attorney General*

February 26, 2007

Julie Speck  
Memphis Police Department  
Grants Office  
201 Poplar – Suite 12-06  
Memphis, TN 38103

Re: Letter of Agreement - PSN grant \$78,500

Dear Julie:

Enclosed is a fully executed copy of the above referenced agreement. This is your notice to proceed with the described services in the agreement.

If you have any questions, please call me at 545-5955 or on my mobile, 508-3386.

Sincerely,

Priscilla C. Campbell  
Chief Administrative Officer

Enclosure




SHELBY COUNTY GOVERNMENT  
CONTRACTS ADMINISTRATION  
160 N. MAIN, SUITE 550  
MEMPHIS, TN 38103  
(901) 545-4361 (901) 545-3999 FAX

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DEPARTMENTAL COMMUNICATION

TO: Dana Dockery  
District Attorney General

FROM: Bernita Poole   
Contracts Administration

DATE: February 20, 2007

SUBJECT: Contract- City of Memphis; Letter of Agreement  
Contract Number: CA074540

Enclosed please find **fully executed** copies of the above referenced contract. Please retain a copy for your files and forward a copy to the City of Memphis with a **"Notice to Proceed"** for the described services of the contract.

Generally, contracts contain many terms and conditions and, in a number of instances, have provisions that impose duties and conditions on the County which if not followed or violated, will result in a monetary loss or other penalty being imposed on the County. Please insure that the appropriate individual within your department, who is responsible for monitoring and compliance of this agreement, is fully aware of its entire terms and conditions and of any requirements contained therein. If there are any questions that arise as a result of the contents of the attached, please contact Contracts Administration immediately.

Also, on occasion, one contract will affect how another contract is administered. Normally this situation involves either Federal or State grants which require that the funds received be spent under separate contract in a specific manner. Coordination of both contracts is mandatory. If there are any questions that arise as a result of the contents of the attached, please contact Contracts Administration immediately.

Please make sure that the above referenced contract number is shown on all invoices and correspondence pertaining to this contract.

Enclosures

Item No.: 18

Prepared by: Dana Dockery

Commissioner: CHISM

Approved by: Kathy Johnson

RESOLUTION REQUESTING APPROVAL OF A CONTRACT WITH THE  
CITY OF MEMPHIS IN AN AMOUNT OF \$78,500.00 FOR OUTSIDE  
CONTRACTS FOR THE DISTRICT ATTORNEY GENERAL'S OFFICE  
FOR THE SHELBY COUNTY ANTI-GANG INITIATIVE

WHEREAS, The Office of the District Attorney General has been awarded \$213,382.00 for the Shelby County Anti-Gang Initiative by the Department of Justice for October 1, 2006 through September 30, 2008; and

WHEREAS, The City of Memphis Police Department on behalf of the Project Safe Neighborhood Unit, hereinafter called the PSN Unit, is a sub-recipient and has been awarded \$78,500.00 from the Grantor for overtime and equipment; and

WHEREAS, This activity has been determined to meet the criteria set forth under the Shelby County Anti-Gang Initiative; and

WHEREAS, The contract is based upon a two year agreement at a cost of \$78,500.00; and

WHEREAS, Funds are available in the FY 2006/2007 Operating Budget Account No. 208-709001-6637, Outside Contracts.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the expenditure of funds for Outside Contracts in the amount of \$78,500.00 to the City of Memphis, for the District Attorney General's Office is hereby approved.

BE IT FURTHER RESOLVED, That funds in the amount of \$78,500.00 are hereby appropriated from FY 2006/2007 Operating Budget Account No. 208-709001-6637, Outside Contracts.

BE IT FURTHER RESOLVED, That the Purchasing Department is authorized to issue a purchase order to the City of Memphis in the amount of \$78,500.00 for the purpose of Outside Contracts for the Shelby County Anti-Gang Initiative for the District Attorney General's Office.

BE IT FURTHER RESOLVED, That the County Mayor and the Director of Administration and Finance are hereby authorized to issue their warrant or warrants in an amount not exceed \$78,500.00 to the City of Memphis and to take proper credit in their accounting therefor.



A C Wharton, Jr., County Mayor

Date: 2/9/07

ATTEST:

Cassie L. Smith  
Clerk of County Commission

ADOPTED: February 5, 2007



**LETTER OF AGREEMENT  
BETWEEN  
SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE  
AND  
CITY OF MEMPHIS, TENNESSEE**

**THIS AGREEMENT**, made and entered into by and between the City of Memphis, Tennessee, acting through the Memphis Police Department, with principal offices at 201 Poplar, 12-00, Memphis, Tennessee 38103, as party of the first part, hereinafter called "City" or "Grantee," and the Shelby County District Attorney General's Office, with principal offices located at 201 Poplar Avenue, Suite 301, Memphis, TN 38 103, as party of the second part, hereinafter called the "Grantor."

**WITNESSETH:**

**WHEREAS**, the Grantor has received \$213,382.00 from the Department of Justice to be used for activities eligible under the Shelby County Anti-Gang Initiative; and

**WHEREAS**, the City of Memphis Police Department on behalf of the Project Safe Neighborhood Unit, hereinafter called the PSN Unit, is a sub-recipient and has been awarded \$78,500.00 from the Grantor for overtime and equipment; and

**WHEREAS**, this activity has been determined to meet the criteria set forth under the Shelby County Anti-Gang Initiative; and

**NOW THEREFORE**, premises considered, the parties of this Agreement for consideration set forth below, do here and now agree and bind themselves to the following terms and conditions:

**PROJECT DESCRIPTION**

The PSN Unit reviews each arrest where a person is arrested with a firearm. The objective is to learn if the person has ever been convicted of a felony crime anywhere in the United States. If the arrested person is a convicted felon, a packet is prepared containing extensive background information about the person. The packet is presented to a representative of the United States Attorney's Office (USA) and to the Shelby County District Attorney's Office (SCDA). This is done at a scheduled weekly meeting. A decision is made whether or not this case will be accepted into the PSN initiative. If accepted, the case may be prosecuted directly in federal court or the SCDA can make an offer in state court that, if accepted, will result in the USA declining prosecution. If the person refuses to plead to the offer, the case is dismissed by the SCDA and the USA indicts the person. The PSN Unit currently reviews arrests in Memphis, Bartlett, Millington, Germantown, Collierville and Shelby County.

The PSN Unit also investigates cases that involve persons that buy or supply firearms to convicted felons. The unit investigates reports where charges could later be filed against a person suspected of possessing firearms as a convicted felon. They work very closely with Alcohol, Tobacco, and Firearms (ATF) and the Tennessee Bureau of Investigation (TBI). The unit attempts to identify firearm suppliers that are acting illegally. It actively works with informants

in an attempt to reach its goal of reducing illegal firearms on the streets of Shelby County, Tennessee.

## **TERM OF AGREEMENT**

The term of this Agreement shall commence on October 1, 2006, and end on September 30, 2008, unless otherwise extended in writing by both parties. Only eligible expenses incurred during this period or any extension shall be reimbursed. The last date to submit expenses for reimbursement shall be October 31, 2008, or any date otherwise agreed upon in a written extension. All costs will be paid on a reimbursement basis.

## **BUDGET**

The Grantor shall provide up to \$78,500.00 in funds to the City for eligible expenses as set forth in Attachment A. Any revision of the budget, as set forth in Attachment A, whether in the budget amount or the use of funds, is subject to prior written approval by the Grantor.

## **CITY REQUIREMENTS**

1. The City shall submit a reimbursement request once a month for expenses incurred in each budget category as outlined per the attached Budget Summary (Attachment A). Only expenses delineated in each budget category are allowable.
2. With written prior approval by the Grantor, the City may make budgetary revisions consistent with program needs as long as total funding remains unaffected. Reimbursement is only allowed for the cost of procuring goods, materials, supplies, equipment or travel when such procurement is made on a competitive basis, where applicable, including the use of competitive bidding procedures.
3. The City agrees to be responsible for the accountability of equipment purchased with funds provided under this Agreement, in which the Grantor retains an interest, as described below:
  - a. The City shall identify all equipment purchased in its reimbursement request.
  - b. The City shall maintain accounting records for all equipment purchased to include the following:
    - i. Equipment Description
    - ii. Date of Purchase
    - iii. Equipment Costs
    - iv. Location
  - c. The City shall take legal title to all equipment purchased, subject to the Grantors equitable interest therein, to the extent that it is prorated, based upon the Grantor's contribution to the purchase price, and to the extent that such is permitted pursuant to the Department of Justice Grant.
  - d. The City shall request written approval from the Grantor for any proposed disposition of equipment.
  - e. The City shall notify the Grantor, in writing, of any equipment loss describing reason(s) for the loss.
  - f. Upon termination of funding where a further contractual relationship is not entered into, all equipment shall be disposed of in one of the following ways:



- i. Equipment may be returned to the Grantor or transferred to any party designated by the Grantor by refunding to the City the prorated amount of the residual value based price, or
  - ii. Equipment may be retained, by the City through an agreement whereby the Grantor maintains control over the jurisdiction, utilization, and final dispositions of equipment; or
  - iii. In such other manner as parties may agree to from among alternatives approved by the Grantor.
- g. Should the equipment be destroyed, lost or stolen, the City shall be responsible to the Grantor for the prorated amount of the residual value at the time of loss based upon the Grantor's original contribution to the purchase price. If there is any stolen equipment, a copy of a police report must be submitted to the Shelby County District Attorney General's Office at 201 Poplar Avenue, Suite 301 Memphis, Tennessee 38103.
  - h. The Grantor shall reimburse the City on a monthly basis in the amounts stipulated in the attached Budget Summary (Attachment A). The Grantor shall not be liable for any expenses incurred by the City in excess of those stipulated in each budget category contained in the proposal. Compensation to the City for travel, meals, and/or lodging within the scope of service for this Agreement shall be in the amount of actual costs to the City, subject to the maximum amounts and all limitations specified in the City's Travel Regulation, as this may from time to time be amended.

## **STANDARD TERMS AND CONDITIONS**

1. The City shall maintain confidential client records documenting services provided and progress made of all clients in the program. All information obtained on clients in the program shall be confidential and shall be shared professionally only with the authorization of the client's representative. The City shall provide complete access to said records to the Grantor's personnel who are authorized by the Grantor to receive confidential information.
2. The City agrees to submit documentation, budget revisions and other information which shows that funds are being utilized solely for the purpose of maintaining the operations of the Project Safe Neighborhood Unit as outlined by the Memphis Police Department.
3. The City shall not assign this Agreement or enter into a sub-grant or sub-contractual agreement for any of the services performed under this Agreement without obtaining the prior written approval by the Grantor.
4. The City covenants that it has no public or private interest and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The City warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the Memphis Police Department as wages, compensation or gifts in exchange for acting as officer, agent, employee, sub-contractor or consultant to the City in connection to any work contemplated or performed relative to this Agreement.
5. The City warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the City to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the City, any fee, commission, percentage, brokerage fee, gift or other



consideration. For breach or violation, of this warranty, the Grantor will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

6. During all phases of the work and services to be provided hereunder, the City agrees to permit duly authorized agents and employees of the Grantor to enter the City offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The City shall maintain documentation for all changes against the Grantor under this Agreement. The books, records and documents of the City's, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Grantor or their duly appointed representatives
7. The Grantor may terminate the Agreement upon thirty (30) days written notice by the Grantor of the City's failure to provide the services specified under this Agreement. Either party may terminate this Agreement by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the City shall be entitled to receive compensation for any satisfactory work performed as of the termination date.
8. The City certifies that it is qualified to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at it's expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. The City is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the City agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the County of the Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the County of the State of Tennessee located in Shelby County, Tennessee.
9. The City agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation, in, or be denied benefits to or be otherwise subject to discrimination in the performance of this Agreement, or in the employment practices of the City. The City shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

## **FEDERAL REQUIREMENTS**

1. If federal funds are used to procure goods, materials or services, the City shall comply with all federal regulations in the performance of its duties under this Agreement, including the federal procuring requirements set forth in Title 41 of the Code of Federal Regulations, Subpart 1-15.2 through Subpart 15.8 relative to public Agreements and property management.
2. The City certifies to the best of its knowledge and belief that:  
  
No federally appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of any agency,



or a Member of Congress in connection with the awarding of any federal Agreement, the making of any federal grant; the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Agreement, grant loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the City shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Grantor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontractors, and Agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

3. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
4. This Agreement maybe modified or amended, only if amendment is made in writing and signed by both parties.
5. If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provisions shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid and enforceable.
6. The City shall perform upon the request of the Grantor any or all of the scope of services, as well, as any or all of the general responsibilities, as well as submit to the Grantor's limitations and liabilities, under the State of Tennessee Multi-Services Grant Agreement, the entirety of which is incorporated herein by reference as stated verbatim. It is understood and agreed between the parties that should any of the terms or conditions of this Agreement or its amendments conflict with terms and conditions of the Multi-Services Grant Agreement or its amendments the terms and conditions of the Multi-Services Agreement and its amendment shall control.
7. The City agrees that it will maintain a drug free workplace in accordance with the requirements of 28 CFR Part 67, and shall administer a policy for drug and alcohol free facilities.
8. The City agrees that no funds will be used directly or indirectly to award Agreements to, employ, or engage the services of any Agreement or during any period of debarment, suspension, or placement in ineligibility status under the provisions of 28 CFR Part 67.
9. In accordance with requirements set forth in 28 CFR Parts 66 and 70, all financial records, supporting documents, statistical records, and all other records pertinent to the award shall be retained by the City for at least three (3) years following the closure of their most recent audit

report. The three-year retention period starts when the single audit report covering the grant period is submitted.

10. The City gives the right of access to their records for the review to any federal, state, and/or local representative of the bureau of Justice Assistance.

## SANCTIONS

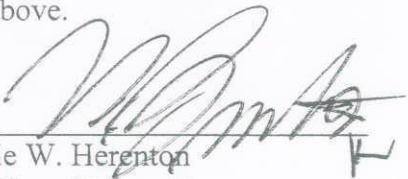
The Grantor may perform one or both of the following actions if the City fails to comply with terms and conditions of this Agreement.


1. Temporarily withhold reimbursement payments pending the correction(s) of monitor or audit findings.
2. Withhold future awards for the project or agency.

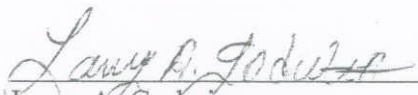
## TERMINATION

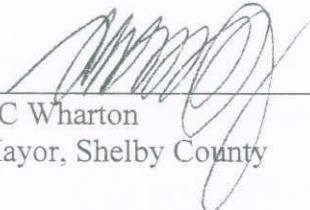
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**IN WITNESS WHEREOF**, the parties below acknowledge this agreement on the date first written above.

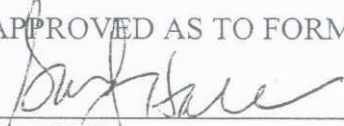
  
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Mayor, City of Memphis

  
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District Attorney General

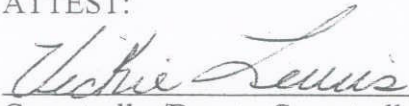
  
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Director, Police Services

  
AC Wharton  
Mayor, Shelby County

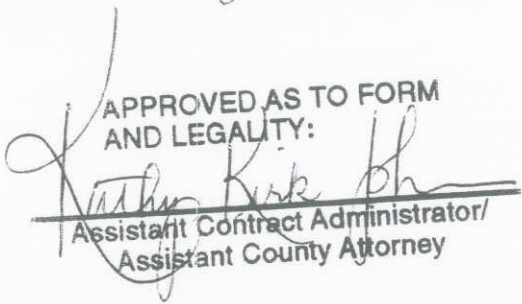
APPROVED AS TO FORM:

  
Sara Hall  
City Attorney, City of Memphis

ATTEST:

  
Vickie Lewis  
Comptroller/Deputy Comptroller

APPROVED AS TO FORM  
AND LEGALITY:

  
Kathryn Kirk  
Assistant Contract Administrator/  
Assistant County Attorney

## ATTACHMENT A

### PSN Project Budget October 1, 2006 – September 30, 2008

Overtime	\$54,854.60
Entry Equipment	\$6,500.00
Surveillance Equipment	\$11,500.00
Crime Scene Documentation	\$1,750.00
Office Equipment	\$2,895.40
Office Supplies	<u>\$1,000.00</u>
<b>Total</b>	<b>\$78,500.00</b>



**LETTER OF AGREEMENT  
BETWEEN  
SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE  
AND  
CITY OF MEMPHIS, TENNESSEE**

**THIS AGREEMENT**, made and entered into by and between the City of Memphis, Tennessee, acting through the Memphis Police Department, with principal offices at 201 Poplar, 12-00, Memphis, Tennessee 38103, as party of the first part, hereinafter called "City" or "Grantee," and the Shelby County District Attorney General's Office, with principal offices located at 201 Poplar Avenue, Suite 301, Memphis, TN 38 103, as party of the second part, hereinafter called the "Grantor."

**WITNESSETH:**

**WHEREAS**, the Grantor has received \$213,382.00 from the Department of Justice to be used for activities eligible under the Shelby County Anti-Gang Initiative; and

**WHEREAS**, the City of Memphis Police Department on behalf of the Project Safe Neighborhood Unit, hereinafter called the PSN Unit, is a sub-recipient and has been awarded \$78,500.00 from the Grantor for overtime and equipment; and

**WHEREAS**, this activity has been determined to meet the criteria set forth under the Shelby County Anti-Gang Initiative; and

**NOW THEREFORE**, premises considered, the parties of this Agreement for consideration set forth below, do here and now agree and bind themselves to the following terms and conditions:

**PROJECT DESCRIPTION**

The PSN Unit reviews each arrest where a person is arrested with a firearm. The objective is to learn if the person has ever been convicted of a felony crime anywhere in the United States. If the arrested person is a convicted felon, a packet is prepared containing extensive background information about the person. The packet is presented to a representative of the United States Attorney's Office (USA) and to the Shelby County District Attorney's Office (SCDA). This is done at a scheduled weekly meeting. A decision is made whether or not this case will be accepted into the PSN initiative. If accepted, the case may be prosecuted directly in federal court or the SCDA can make an offer in state court that, if accepted, will result in the USA declining prosecution. If the person refuses to plead to the offer, the case is dismissed by the SCDA and the USA indicts the person. The PSN Unit currently reviews arrests in Memphis, Bartlett, Millington, Germantown, Collierville and Shelby County.

The PSN Unit also investigates cases that involve persons that buy or supply firearms to convicted felons. The unit investigates reports where charges could later be filed against a person suspected of possessing firearms as a convicted felon. They work very closely with Alcohol, Tobacco, and Firearms (ATF) and the Tennessee Bureau of Investigation (TBI). The unit attempts to identify firearm suppliers that are acting illegally. It actively works with informants



in an attempt to reach its goal of reducing illegal firearms on the streets of Shelby County, Tennessee.

## **TERM OF AGREEMENT**

The term of this Agreement shall commence on October 1, 2006, and end on September 30, 2008, unless otherwise extended in writing by both parties. Only eligible expenses incurred during this period or any extension shall be reimbursed. The last date to submit expenses for reimbursement shall be October 31, 2008, or any date otherwise agreed upon in a written extension. All costs will be paid on a reimbursement basis.

## **BUDGET**

The Grantor shall provide up to \$78,500.00 in funds to the City for eligible expenses as set forth in Attachment A. Any revision of the budget, as set forth in Attachment A, whether in the budget amount or the use of funds, is subject to prior written approval by the Grantor.

## **CITY REQUIREMENTS**

1. The City shall submit a reimbursement request once a month for expenses incurred in each budget category as outlined per the attached Budget Summary (Attachment A). Only expenses delineated in each budget category are allowable.
2. With written prior approval by the Grantor, the City may make budgetary revisions consistent with program needs as long as total funding remains unaffected. Reimbursement is only allowed for the cost of procuring goods, materials, supplies, equipment or travel when such procurement is made on a competitive basis, where applicable, including the use of competitive bidding procedures.
3. The City agrees to be responsible for the accountability of equipment purchased with funds provided under this Agreement, in which the Grantor retains an interest, as described below:
  - a. The City shall identify all equipment purchased in its reimbursement request.
  - b. The City shall maintain accounting records for all equipment purchased to include the following:
    - i. Equipment Description
    - ii. Date of Purchase
    - iii. Equipment Costs
    - iv. Location
  - c. The City shall take legal title to all equipment purchased, subject to the Grantors equitable interest therein, to the extent that it is prorated, based upon the Grantor's contribution to the purchase price, and to the extent that such is permitted pursuant to the Department of Justice Grant.
  - d. The City shall request written approval from the Grantor for any proposed disposition of equipment.
  - e. The City shall notify the Grantor, in writing, of any equipment loss describing reason(s) for the loss.
  - f. Upon termination of funding where a further contractual relationship is not entered into, all equipment shall be disposed of in one of the following ways:

- i. Equipment may be returned to the Grantor or transferred to any party designated by the Grantor by refunding to the City the prorated amount of the residual value based price, or
  - ii. Equipment may be retained, by the City through an agreement whereby the Grantor maintains control over the jurisdiction, utilization, and final dispositions of equipment; or
  - iii. In such other manner as parties may agree to from among alternatives approved by the Grantor.
- g. Should the equipment be destroyed, lost or stolen, the City shall be responsible to the Grantor for the prorated amount of the residual value at the time of loss based upon the Grantor's original contribution to the purchase price. If there is any stolen equipment, a copy of a police report must be submitted to the Shelby County District Attorney General's Office at 201 Poplar Avenue, Suite 301 Memphis, Tennessee 38103.
- h. The Grantor shall reimburse the City on a monthly basis in the amounts stipulated in the attached Budget Summary (Attachment A). The Grantor shall not be liable for any expenses incurred by the City in excess of those stipulated in each budget category contained in the proposal. Compensation to the City for travel, meals, and/or lodging within the scope of service for this Agreement shall be in the amount of actual costs to the City, subject to the maximum amounts and all limitations specified in the City's Travel Regulation, as this may from time to time be amended.

## **STANDARD TERMS AND CONDITIONS**

1. The City shall maintain confidential client records documenting services provided and progress made of all clients in the program. All information obtained on clients in the program shall be confidential and shall be shared professionally only with the authorization of the client's representative. The City shall provide complete access to said records to the Grantor's personnel who are authorized by the Grantor to receive confidential information.
2. The City agrees to submit documentation, budget revisions and other information which shows that funds are being utilized solely for the purpose of maintaining the operations of the Project Safe Neighborhood Unit as outlined by the Memphis Police Department.
3. The City shall not assign this Agreement or enter into a sub-grant or sub-contractual agreement for any of the services performed under this Agreement without obtaining the prior written approval by the Grantor.
4. The City covenants that it has no public or private interest and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The City warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the Memphis Police Department as wages, compensation or gifts in exchange for acting as officer, agent, employee, sub-contractor or consultant to the City in connection to any work contemplated or performed relative to this Agreement.
5. The City warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the City to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the City, any fee, commission, percentage, brokerage fee, gift or other



consideration. For breach or violation, of this warranty, the Grantor will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

6. During all phases of the work and services to be provided hereunder, the City agrees to permit duly authorized agents and employees of the Grantor to enter the City offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The City shall maintain documentation for all changes against the Grantor under this Agreement. The books, records and documents of the City's, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Grantor or their duly appointed representatives
7. The Grantor may terminate the Agreement upon thirty (30) days written notice by the Grantor of the City's failure to provide the services specified under this Agreement. Either party may terminate this Agreement by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the City shall be entitled to receive compensation for any satisfactory work performed as of the termination date.
8. The City certifies that it is qualified to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at it's expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. The City is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the City agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the County of the Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the County of the State of Tennessee located in Shelby County, Tennessee.
9. The City agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation, in, or be denied benefits to or be otherwise subject to discrimination in the performance of this Agreement, or in the employment practices of the City. The City shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

#### **FEDERAL REQUIREMENTS**

1. If federal funds are used to procure goods, materials or services, the City shall comply with all federal regulations in the performance of its duties under this Agreement, including the federal procuring requirements set forth in Title 41 of the Code of Federal Regulations, Subpart 1-15.2 through Subpart 15.8 relative to public Agreements and property management.
2. The City certifies to the best of its knowledge and belief that:  
  
No federally appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of any agency,



or a Member of Congress in connection with the awarding of any federal Agreement, the making of any federal grant; the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Agreement, grant loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the City shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Grantor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontractors, and Agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

3. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
4. This Agreement maybe modified or amended, only if amendment is made in writing and signed by both parties.
5. If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provisions shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid and enforceable.
6. The City shall perform upon the request of the Grantor any or all of the scope of services, as well, as any or all of the general responsibilities, as well as submit to the Grantor's limitations and liabilities, under the State of Tennessee Multi-Services Grant Agreement, the entirety of which is incorporated herein by reference as stated verbatim. It is understood and agreed between the parties that should any of the terms or conditions of this Agreement or its amendments conflict with terms and conditions of the Multi-Services Grant Agreement or its amendments the terms and conditions of the Multi-Services Agreement and its amendment shall control.
7. The City agrees that it will maintain a drug free workplace in accordance with the requirements of 28 CFR Part 67, and shall administer a policy for drug and alcohol free facilities.
8. The City agrees that no funds will be used directly or indirectly to award Agreements to, employ, or engage the services of any Agreement or during any period of debarment, suspension, or placement in ineligibility status under the provisions of 28 CFR Part 67.
9. In accordance with requirements set forth in 28 CFR Parts 66 and 70, all financial records, supporting documents, statistical records, and all other records pertinent to the award shall be retained by the City for at least three (3) years following the closure of their most recent audit

22677

report. The three-year retention period starts when the single audit report covering the grant period is submitted.

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## SANCTIONS


The Grantor may perform one or both of the following actions if the City fails to comply with terms and conditions of this Agreement.


1. Temporarily withhold reimbursement payments pending the correction(s) of monitor or audit findings.
2. Withhold future awards for the project or agency.

## TERMINATION

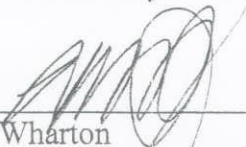
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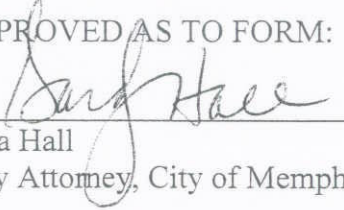
  
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Mayor, City of Memphis

  
William L. Gibbons  
District Attorney General

  
Larry A. Godwin  
Director, Police Services

  
AC Wharton  
Mayor, Shelby County


APPROVED AS TO FORM:

  
Sara Hall  
City Attorney, City of Memphis

APPROVED AS TO FORM  
AND LEGALITY:

  
Assistant Contract Administrator/  
Assistant County Attorney

ATTEST:

  
Comptroller/Deputy Comptroller



## ATTACHMENT A

### PSN Project Budget October 1, 2006 – September 30, 2008

Overtime	\$54,854.60
Entry Equipment	\$6,500.00
Surveillance Equipment	\$11,500.00
Crime Scene Documentation	\$1,750.00
Office Equipment	\$2,895.40
Office Supplies	<u>\$1,000.00</u>
<b>Total</b>	<b>\$78,500.00</b>

SHELBY COUNTY BOARD OF COMMISSIONERS  
AGENDA ROUTE SHEET

CA096782

Referred to Commission Committee (name) \_\_\_\_\_

For Commission Action on (date) 7/21/08

DESCRIPTION OF ITEM:

RESOLUTION APPROVING CONTRACT WITH ARAMARK CORRECTIONAL SERVICES, LLC IN THE AMOUNT NOT TO EXCEED \$4,150,000.00 FOR THE MANAGEMENT AND PROVISION OF FOOD SERVICES FOR THE DIVISION OF CORRECTIONS AND AMENDING THE FY09 CORRECTIONS FUND BUDGET. THIS ITEM REQUIRES EXPENDITURE OF CORRECTIONS FUNDS IN THE AMOUNT OF \$4,150,000.00. SPONSORED BY COMMISSIONER SIDNEY CHISM.

CHECK ALL THAT APPLY BELOW:

\_\_\_\_\_ This Action does NOT require expenditure of funds.

X This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ \_\_\_\_\_ ; County CIP Funds- \$ \_\_\_\_\_

State Grant Funds: \$ \_\_\_\_\_ ; State Gas Tax Funds: \$ \_\_\_\_\_

Federal Grant Funds: \$ \_\_\_\_\_

Other funds (Specify source and amount): Corrections Fund \$ 4,150,000.00

Other pass-thru funds (Specify source and amount): \$ \_\_\_\_\_

Originating Department: Division of Corrections

APPROVAL:

Dept. Head:	<u>John Trusty 377-4501</u> (Type your name & phone #.)	<u>JCT</u> (Initials)	<u>7/9/08</u> (Date)
Division Director:	<u>Andrew Taber 377-4502</u> (Type your name & phone #.)	<u>AT</u> (Initials)	<u>7-9-08</u> (Date)
Finance Dept.	<u>Mike Swift 575-8269</u> (Type your name & phone #.)	<u>MS</u> (Initials)	<u>7/10/08</u> (Date)
County Attorney:	<u>Kathy Kirk-Johnson 545-4263</u> (Type your name & phone #.)	<u>KKJ</u> (Initials)	<u>7/9/08</u> (Date)
CAO/Mayor:	<u>James F. Huntzicker 545-4514</u> (Type your name & phone #.)	<u>JFH</u> (Initials)	<u>7/10/08</u> (Date)

## SUMMARY SHEET

### I. Description of Item

Resolution authorizes the Shelby County Division of Corrections to contract with ARAMARK Correctional Services, LLC for the management and provision of food services for the Division of Corrections. This is a change from operating food service with county employees. ARAMARK has been provided this service for the Jail since 2002. It is necessary to amend the Corrections Fund budget and position control budget for this change in the method of doing business.

The county issued an RFP for the Jail on March 3, 2008 and an addendum was issued on March 25, 2008 to include the Division of Corrections as a result of discussion during a Law Enforcement Committee meeting of the County Commission. The RFP required vendors to propose a menu that met portion sizes as well as equivalent nutritional and caloric values currently served at the Division of Corrections. ARAMARK was the only respondent and their proposed cost was compared to the historical and projected costs of the Division's food service operation. The Division's unit food costs have been rising this spring and recent food bids for FY09 reflect 15% to 20% increases over bids from a year ago. This rise in food costs is the basis of the decision to contract with ARAMARK.

ARAMARK's proposal reflects a annualized savings of \$600,000 for FY09 compared to the projected costs of internally staffing and operating the food service function. ARAMARK's proposal is within the Division's budget, while internal operations would require an estimated increase in funding of \$477,000.00 for FY09. In addition, ARAMARK will provide up to \$100,000 in new equipment for the Division's two cooking kitchens and will give the Sheriff a \$.03 per meal discount when awarded both facilities.

The County currently has 33 employees assigned to food service operations. The County will work to place these employees in other vacant county positions for which they are qualified and ARAMARK will give first consideration to our current employees in filling their positions.

### II. Source and Amount of Funding

- A. Amount Expended/Budget Line Item – \$4,150,000.00 from 956-350105-6635, Corrections Division-Contracted Food Services. The County will recover at least 75% of these funds through State reimbursement for housing state prisoners.
- B. All Costs (Direct/Indirect) – County will continue to be responsible for utilities and maintenance of the building.
- C. Additional or Subsequent Obligations or Expenses of Shelby County – Ongoing responsibility for feeding inmates.

### III. Contract Items

- A. Type of Contract - Contract for management and provision of food services
- B. Terms - Initial period from August 21, 2008 to June 30, 2009 with the option to renew for two (2) additional one (1) year periods.

### IV. Additional Information Relevant to approval of this item

Administration recommends approval of this Resolution.



ITEM# \_\_\_\_\_

PREPARED BY John Trusty

COMMISSIONER \_\_\_\_\_

APPROVED BY 

---

RESOLUTION APPROVING CONTRACT WITH ARAMARK CORRECTIONAL SERVICES, LLC IN THE AMOUNT NOT TO EXCEED \$4,150,000.00 FOR THE MANAGEMENT AND PROVISION OF FOOD SERVICES FOR THE DIVISION OF CORRECTIONS AND AMENDING THE FY09 CORRECTIONS FUND BUDGET. THIS ITEM REQUIRES EXPENDITURE OF CORRECTIONS FUNDS IN THE AMOUNT OF \$4,150,000.00. SPONSORED BY COMMISSIONER SIDNEY CHISM.

---

WHEREAS, The Shelby County Division of Corrections is responsible for an average daily population of 3,100 inmates on a regular basis; and

WHEREAS, The Shelby County Division of Corrections must feed these inmates three (3) meals a day which meet both nutritional standards and satisfy their hunger since food related issues are the number one cause of inmate disturbances in prisons; and

WHEREAS, A significant number of the inmates housed at the Shelby County Division of Corrections have various work assignments ranging from Work Release and Road Department Work Lines to assisting in building and grounds maintenance for the Division, and therefore have different meal needs than sedentary detainees like those housed in the Jail at 201 Poplar; and

WHEREAS, The Division of Corrections operates with minimum custody staffing for the number of prisoners housed and must also feed its staff since they cannot be allowed to leave the facility during their shift; and

WHEREAS, Request for Proposal Bid Number RFP 08-003-57 with addendums was issued with responses due on April 9, 2008, and ARAMARK Correctional Services, LLC was the only response received. ARAMARK's proposal specified a cyclical planned menu, including portion sizes, and was based on a cost per meal served; and

WHEREAS, After a thorough review of ARAMARK's proposal was made and their expected billings projected and compared with the county's internal projected costs for FY09 based on estimated population levels, ARAMARK was chosen as the lowest and best method of providing food service for the Division; and

WHEREAS, The County will work with ARAMARK to place as many of its food service personnel as possible and will also seek to place displaced employees in other positions within county government for which they are qualified; and

WHEREAS, The operating budget and the position control budget for the Corrections Fund will need to be amended to eliminate positions and consolidate budgets into a single account for the contracted services; and

WHEREAS, ARAMARK will need until August 21, 2008 to begin operations after approval of a contract and has proposed guaranteed rates for each of three years based on current population levels; and

WHEREAS, The resulting contract was prepared for the period from August 21, 2008 through June 30, 2009 with the option to renew for two (2) additional one (1) year periods; and

WHEREAS, The contract is prepared pursuant to Shelby County Purchasing Policies and Procedures in the amount not to exceed \$4,150,000.00 for FY09.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the contract with ARAMARK Correctional Services, LLC in the amount not to exceed \$4,150,000.00 for the management and provision of food services for the period August 1, 2008 through June 30, 2009 for the Division of Corrections is hereby approved and funds are appropriated from account no. 956-350105-6635, Contracted Food Services.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute the said contract on behalf of Shelby County Government for the purposes herein contained, an executed copy of which is to be placed on file in the Purchasing Department.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute the annual renewals subject to satisfactory performance by the vendor.

BE IT FURTHER RESOLVED, That the FY08 operating budget and the position control budget for the Corrections Fund are hereby amended as per exhibits A and B, respectively, which are attached to this resolution and incorporated herein by reference, and that funds are hereby appropriated as per the said exhibit.

BE IT FURTHER RESOLVED, That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants in the amount not to exceed \$4,150,000.00 for the purposes contained in this resolution and to take proper credit in their accounting therefor.

\_\_\_\_\_  
A C Wharton Jr., County Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_  
Clerk of County Commission

ADOPTED \_\_\_\_\_



## Shelby County Division of Corrections

## Exhibit A

## Budget Amendment FY09

## Corrections Fund

Account No.	Description	Current Budget	Changes	Revised Budget
<b>Fund 956 - Org # 350110 Food Services</b>				
5102	Salaries	1,257,978.00	(997,040.00)	260,938.00
5190	Expense Allowance	0.00	16,950.00	16,950.00
5251	Overtime/Holiday Pay	24,000.00	(21,900.00)	2,100.00
5254	Overtime	87,450.00	(67,450.00)	20,000.00
5266	Longevity	1,650.00	(1,650.00)	-
5269	Shift Differential	5,075.00	(4,505.00)	570.00
5510	County Retirement	88,529.00	(69,793.00)	18,736.00
5511	OPEB Retiree Insurance	85,367.00	(67,300.00)	18,067.00
5516	MQFE	19,954.00	(14,457.00)	5,497.00
5520	Group Life	8,554.00	(6,780.00)	1,774.00
5540	Group Health	4,538.00	(4,538.00)	-
5543	CIGNA Insurance	211,898.00	(177,220.00)	34,678.00
5560	Long-Term Disability	20,128.00	(15,953.00)	4,175.00
5591	OJI	19,499.00	(15,454.00)	4,045.00
5592	Unemployment	4,139.00	(3,280.00)	859.00
5635	Lapse Time Restriction	-105,771.00	105,771.00	-
6006	Apparel - Employees	12,000.00	(12,000.00)	-
6014	Custodial Supplies	30,000.00	(25,000.00)	5,000.00
6780	Maint Equipment	50,000.00	(43,697.00)	6,303.00
7004	Production Equipment	13,000.00	-	13,000.00
	Total Expenditures	1,837,988	(1,425,296.00)	412,692.00
<b>Fund 956 - Org # 350105 General Services - Selected Accounts</b>				
5102	Salaries	429,391.00	(45,831.00)	383,560.00
5510	County Retirement	30,057.00	(3,208.00)	26,849.00
5511	OPEB Retiree Insurance	28,984.00	(3,094.00)	25,890.00
5516	MQFE	6,602.00	(665.00)	5,937.00
5520	Group Life	2,920.00	(312.00)	2,608.00
5560	Long-Term Disability	6,870.00	(733.00)	6,137.00
5591	OJI	6,656.00	(710.00)	5,946.00
5592	Unemployment	1,413.00	(151.00)	1,262.00
6028	Food Purchases	2,900,000.00	(2,500,000.00)	400,000.00
6038	Kitchen & Dining Supplies	200,000.00	(170,000.00)	30,000.00
6635	Contracted Food Services	0.00	4,150,000.00	4,150,000.00
			1,425,296.00	
<b>Combined Budget</b>			-	

Shelby County Division of Corrections  
Position Control Budget Amendment FY09

Exhibit B  
Corrections Fund  
Fund 956

Position No.	Position Description	Cost Center	Current Budget	Changes	Revised Budget
910180	MANAGER A	C0110	66,000.00	(66,000)	-
910182	SUPERVISOR A	C0110	49,446.00	(36,265)	13,181
960050	BUTCHER	C0110	40,515.00	(40,515)	-
880157	FOREMAN A	C0110	38,854.00	(27,280)	11,574
900131	SUPERVISOR C	C0110	37,951.00	(29,393)	8,558
910183	SUPERVISOR C	C0110	37,951.00	(27,441)	10,510
910184	SUPERVISOR C	C0110	37,951.00	(30,052)	7,899
862086	FOREMAN B	C0110	35,404.00	(26,697)	8,707
900132	FOREMAN B	C0110	35,404.00	(24,413)	10,991
910187	FOREMAN B	C0110	35,404.00	(25,981)	9,423
910189	FOREMAN B	C0110	35,404.00	(23,700)	11,704
860111	COOK	C0110	32,570.00	(25,252)	7,318
860596	COOK	C0110	32,562.00	(26,615)	5,947
860812	COOK	C0110	32,570.00	(25,074)	7,496
863096	COOK	C0110	32,570.00	(25,727)	6,843
880160	COOK	C0110	32,570.00	(23,349)	9,221
880161	COOK	C0110	32,570.00	(22,914)	9,656
890007	COOK	C0110	32,570.00	(27,148)	5,422
890008	COOK	C0110	32,570.00	(24,696)	7,874
891421	COOK	C0110	32,570.00	(26,767)	5,803
891422	COOK	C0110	32,570.00	(25,277)	7,293
891423	COOK	C0110	32,570.00	(23,758)	8,812
900137	COOK	C0110	32,570.00	(24,302)	8,268
900139	COOK	C0110	32,570.00	(26,950)	5,620
900140	COOK	C0110	32,570.00	(26,647)	5,923
900142	COOK	C0110	32,570.00	(25,932)	6,638
910194	COOK	C0110	32,570.00	(27,366)	5,204
910195	COOK	C0110	32,570.00	(23,529)	9,041
910196	COOK	C0110	32,570.00	(32,570)	-
910197	COOK	C0110	32,570.00	(23,487)	9,083
910198	COOK	C0110	32,570.00	(24,933)	7,637
910199	COOK	C0110	32,570.00	(27,573)	4,997
910200	COOK	C0110	32,570.00	(26,667)	5,903
960051	COOK	C0110	32,562.00	(26,750)	5,812
960052	COOK	C0110	32,570.00	(23,147)	9,423
920208	STOCKROOM WORKER	C0110	26,030.00	(22,873)	3,157
Total for Cost Center		C0110	1,257,978.00	(997,040.00)	260,938.00
960048	Purchasing Specialist	C0105	45,831.00	(45,831.00)	-
Total Selected Salaries			1,303,809.00	(1,042,871.00)	260,938.00





30 June 2008

Via Federal Express

Soheila Kail  
Business Manager  
Shelby County Sheriff's office  
201 Poplar Avenue  
Memphis, TN 38103

**Re:    Gratuity Disclosure Form  
         (Food Contract ) between Shelby County Government  
         and ARAMARK Correctional Services, LLC..**

Ms. Kail:

Attached please find an original Gratuity Disclosure Form which has been signed on behalf of ARAMARK Correctional Services.

Also, so that any future correspondence can be addressed in a timely manner, please have your records changed to reflect our correct address:

ARAMARK Correctional Services, LLC  
ARAMARK Tower  
1101 Market Street, 29<sup>th</sup> flr  
Philadelphia, PA 19107

Should you have any questions/concerns please ring me on 215.238.3270.

Sincerely,

A handwritten signature in cursive script that reads "RonicaAlexzandra Mangini".

RonicaAlexzandra Mangini  
Contract Administrator

Attachment

**GRATUITY DISCLOSURE FORM****Shelby County Ethics Commission**

**INSTRUCTIONS:** *This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.*

**1. NAME**

ARAMARK CORRECTIONAL SERVICES, LLC

**2. DATE OF GRATUITY**

N/A

**3. NATURE AND PURPOSE OF THE GRATUITY**

N/A

\_\_\_\_\_

\_\_\_\_\_

**4. NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY**

N/A

**5. NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**

N/A

**6. ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY**

N/A

\_\_\_\_\_

7. DESCRIPTION OF THE GRATUITY

N/A

8. COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)

N/A

9. The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.



Signature

6/29/08

Date

ARAMARK Correctional Services LLC

David Kimmel, Vice President, Finance

Print Name

*A copy of your completed form will be placed on the Shelby County Internet website.*



## OPERATING AGREEMENT - FOOD SERVICE

This **OPERATING AGREEMENT** (the "Agreement") is made as of July \_\_\_\_, 2008 (the "Effective Date") by and between the **Shelby County Government**, with offices at 160 North Main Street, Room 550, Memphis, Tennessee 38103 (the "County"), and **ARAMARK Correctional Services, LLC**, a Delaware limited liability company, having a place of business at the ARAMARK Tower, 1101 Market Street, Philadelphia, Pennsylvania 19107 ("ARAMARK").

### WITNESSETH:

WHEREAS, the County has the need for professional services to provide management and the provision of food services for the Shelby County Department of Corrections; and

WHEREAS, the County issued a Request for Proposals ("RFP") Number 08-003-57 for Jail Food Services on March 3, 2008 and issued RFP Addendum 2 on March 28, 2008 to include Corrections Food Services and ARAMARK responded to said RFP on April 9, 2008; and

WHEREAS, ARAMARK has the knowledge and expertise to provide such services; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which ARAMARK will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

1. **GRANT:** The County hereby grants to ARAMARK the exclusive right to provide food service (excluding vending machine, commissary operations and special events) for the County's inmates, staff and visitors at the Shelby County Division of Corrections complex located at 1045 Mullins Station Road, Memphis, TN 38134 and the Adult Offenders Center ("AOC"), 961 Sycamore View Road, Memphis, TN 38134 (the "Facility"). ARAMARK shall provide the services as outlined herein, and as outlined within the COUNTY'S RFP Number 08-003-57 as Attachment "B", and ARAMARK's response thereto which is attached hereto as Attachment "C". All Attachments shall be incorporated into this Agreement by reference as if fully stated verbatim herein (the "Services"). ARAMARK further agrees to furnish nutritious, wholesome, and palatable food to such inmates, staff and visitors in accordance with this Agreement. The food service shall meet all current standards as established by:

- A. The American Correctional Association.
- B. The Food and Nutritional Board of the National Academy Science as prescribed for inmates.
- C. The State of Tennessee.

## **2. OPERATIONAL RESPONSIBILITIES:**

**A. Facilities And Equipment:** The County shall, at its expense, provide ARAMARK with existing preparation kitchens and serving lines, office and storage facilities at the Facility, completely equipped and ready to operate, together with such heat, refrigeration and utilities services (including local telephone service and high-speed internet access) as may be reasonably required for the efficient performance of the Agreement. ARAMARK shall be responsible for the cost of long distance telephone service.

The County shall furnish building maintenance services for the Facility. The County shall furnish and maintain an adequate inventory of service ware, thermal tray and delivery equipment, pots, pans, beverage containers and utensils at the Facility. ARAMARK shall provide preventive maintenance and food service equipment repairs; provided, however, that the aggregate cost of such maintenance and repairs shall not exceed One Hundred Thousand Dollars (\$100,000) per year. In the event that County maintenance personnel assist in maintaining any food service equipment, ARAMARK shall be responsible for the cost of all parts and supplies, subject to the \$100,000 limit on ARAMARK's responsibility for preventive maintenance and food service equipment repairs. In the event food service equipment preventive maintenance and repair costs exceed \$100,000 for any year, the County shall be responsible for the excess maintenance and repair costs including the cost of parts and supplies. Notwithstanding ARAMARK's general obligation to repair the County's food service equipment, ARAMARK shall not be required to repair any equipment whose cumulative repair costs over a rolling period of one year exceed the value of the equipment. Such equipment shall be replaced by the County at the County's expense.

Should the County fail to provide the equipment, repair, maintenance and replacement services or supplies described in this Section, within a reasonable time after notice from ARAMARK to do so, ARAMARK may, in its discretion and at its option, choose to provide, and bill the County for, such equipment, repair, maintenance and replacement services or supplies. In that event, the County shall pay for such equipment, repair, maintenance and replacement services or supplies at the prices billed by ARAMARK. Such prices shall be competitive with the cost of obtaining such products or services from an independent source in the open market.

**B. Emergency Plan:** ARAMARK shall submit a contingency emergency plan to provide for meal service in the event of a Force Majeure (hereinafter defined) within 60 days after the commencement of operations. In the event of a Force Majeure, the County shall assist ARAMARK by permitting reasonable variations in ARAMARK's menu cycle and service methods. However, ARAMARK shall not be relieved of its responsibility to provide meal service under the terms of this Agreement. Additional costs, if any, incurred in providing service in the event of a Force Majeure shall be borne by the County. The term "Force Majeure" means any war, riot or other disorder, strike or other work stoppage, act of terrorism, fire, flood, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.



**C. Meal Delivery:** ARAMARK personnel shall distribute meals at each Facility's serving line, shall transport such meals to appropriate areas including Buildings E & J and feed-in areas including parts of the Main Building, and shall return all trays and delivery equipment to the appropriate Facility's kitchen, in a timely manner.

**D. Food Products And Cleaning Supplies:** ARAMARK shall purchase and pay for all food products and kitchen cleaning supplies. Products purchased for use in the food service operation shall be the property of ARAMARK.

**E. Sanitation:** ARAMARK shall be responsible for daily cleaning and housekeeping in the food preparation, service, receiving and storage areas, and shall, on a continuing basis, maintain high standards for sanitation. The County shall provide janitorial services outside the kitchen facilities provided to ARAMARK. The County shall clean the vents and ductwork leading to the roof from food preparation areas. The County shall be responsible for extermination services and the provision of dumpsters for trash and garbage from the designated food service areas and for the servicing of the dumpsters and other waste containers.

**F. Personnel:** ARAMARK shall provide on-site management and supervisory personnel, and from its regional and headquarters locations, administrative, dietetic, purchasing, equipment consulting and personnel advice and supervision. The County shall provide inmate workers at each Facility kitchen. The number of inmates required shall be determined by the County liaison and ARAMARK's district manager prior to the commencement of operations but in no event, less than the number specified in the County's Request for Proposals. Such inmates shall be assigned duties in the food service operation that may include sanitation, food preparation and production, and storeroom functions.

The County acknowledges that ARAMARK has invested considerable amounts of time and money in training its management and supervisory employees in systems, procedures, methods, forms, reports, formulas, computer programs, recipes, menus, plans, techniques and other valuable information which is proprietary and unique to ARAMARK's manner of conducting its business and that such information is available, on a confidential basis, to ARAMARK's management and supervisory employees. Therefore, the County agrees that management and supervisory employees of ARAMARK shall neither be hired by the County for the term of this Agreement and twelve (12) months thereafter, nor shall the County permit management and supervisory employees of ARAMARK to be employed on the County's premises for a period of twelve (12) months subsequent to the termination of this Agreement (unless such employees were formerly employees of the County). For the purpose of this prohibition, "management and supervisory employees" shall be defined as those persons who have directly or indirectly performed management or professional services on the County's premises at any time during the twelve (12) month period immediately preceding termination of this Agreement.

The County retains the right to thoroughly investigate any current or prospective employees assigned to each Facility, subject to applicable Federal, state and local laws and regulations, including but not limited to, the Federal Polygraph Protection Act, as amended. If

ARAMARK incurs any costs, retroactive wages and damages, as a result of any personnel action taken by the County or by ARAMARK at the direction of the County, which ARAMARK would not have taken but for the County's direction, the County shall reimburse ARAMARK for such costs.

All employees of ARAMARK who shall regularly enter the Division of Corrections must first clear a criminal background check and be issued a Division ID card. Such background check shall be performed by the Division following the same standards as it applies to its own employees. This background check will be performed at the County's expense and shall not take more than 5 business days.

**G. Equal Employment Opportunity:** ARAMARK and the County mutually agree that they shall not discriminate against any employee or applicant for employment or on any matter directly or indirectly related to employment, because of race, color, religion, sex, sexual preference, national origin, physical or mental handicap where not relevant to the job, height, weight, age, marital status, or other criteria made illegal by state or federal law or the County policy. In addition, ARAMARK agrees to take affirmative steps to ensure that applicants are employed, and that employees are treated, during employment, without regard to the criteria listed above.

**H. Health Examinations:** ARAMARK shall cause its employees assigned to duty at either Facility to submit to periodic health examinations as required by law, and to submit satisfactory evidence of compliance with all health regulations to the County upon written request.

**I. Insurance And Indemnification:** ARAMARK shall provide and maintain the following insurance coverage:

Worker's Compensation insurance as required by law.

Comprehensive General (Public) Liability to include (but not be limited to) the following: Premises/operation; independent contractors; bodily injury; products/completed operation; contractual liability with a combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence. ARAMARK may satisfy these requirements through a combination of primary and excess coverage.

The County and ARAMARK waive any and all right of recovery from each other for property damage or loss of use thereof, howsoever occurring. This waiver shall include, but not be limited to, losses covered by policies of fire, extended coverage, boiler explosion and sprinkler leakage. This waiver shall not apply to claims for personal injury or death.

ARAMARK agrees to defend, indemnify and hold harmless the County, its officers, employees, agents and servants for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of ARAMARK in its performance of the services defined in this Agreement, and to pay all claims, damages,



judgments, legal costs, adjuster fees and attorney fees related thereto. However, it is expressly understood that ARAMARK shall not be responsible for damages caused by inmates nor for damage or injury caused by the County, its employees, officers, agents or servants. Neither any of the County's officers, employees, agents, servants or contractors, nor any inmates, are or will be deemed to be agents or employees of ARAMARK and no liability is or will be incurred by ARAMARK to such persons, except for bodily injury to such persons caused by ARAMARK's sole negligence.

To the extent permitted by applicable law, the County agrees to defend, indemnify and hold ARAMARK harmless from any liability claim made by or through such persons against ARAMARK (except for claims for death, bodily injury or property damage caused by ARAMARK's sole negligence or a wrongful act of ARAMARK in its performance of this Agreement). Each party shall promptly notify the other of any claim for which indemnity is sought, and shall cooperate fully with the other party in the investigation, defense, and settlement of such claim. The indemnifying party shall have the sole discretion to defend and settle such claim. Notwithstanding the foregoing, ARAMARK understands and agrees that Shelby County Government is a governmental entity, as defined by Tennessee Code Annotated Section 29-20-101 et seq., and is self-insured for acts of negligence of its officers and employees. The County's liability shall be limited to the provisions of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated, sections 29-20-101 et seq., for causes sounding in tort.

**J. Compliance With Laws:** Each party hereto shall comply with all statutes, lawful ordinances, regulations and requirements, federal, state, and local applicable to their activities hereunder. The County shall provide reasonable and adequate physical security at all times for ARAMARK employees, suppliers, management and other authorized visitors. This shall not be interpreted to require County personnel to be present with ARAMARK employees when inmates are present; provided, however, in no event shall ARAMARK be responsible for the security of any inmate beyond ensuring the inmates are properly supervised in the manner in which they perform their assigned duties, and the Shift Commander and or Communications is promptly notified of any security breach or threat.

**K. License, Fees, Permits, And Taxes:** ARAMARK shall secure and pay for all federal, state and local licenses, permits and fees required for the food service operations. Except that ARAMARK understands and agrees that the County is a governmental entity that is exempt from taxation. In the event a newly enacted tax is assessed to ARAMARK under the terms of this agreement, or the County's exemption from taxation changes, the County shall reimburse ARAMARK for such tax.

**L. Independent Contractor:** The County's employees, affiliates, and/or inmates are not employees of ARAMARK. Accordingly, County shall be solely responsible for, and ARAMARK shall have no obligation with respect to (1) withholding of income taxes, FICA, or any other taxes or fees; (2) participation in any group insurance plans available to employees of County; (3) participation or contributions by County to the Public Employment Retirement System; (4) accumulation of vacation leave or sick leave; or (5) unemployment compensation coverage provided by County.



### 3. FINANCIAL AND ACCOUNTING ARRANGEMENTS:

**A. Meal Service and Prices:** ARAMARK shall provide meals to the County's inmates, staff and visitors at the per meal prices set forth in Attachment A. ARAMARK will provide, at no additional cost, a lacto-ovo vegetarian and/or vegan diet for all religious requests from the administrative or religious authority. Special religious meals requested by the administration or religious authority, such as Passover or Ramadan meals, shall be provided at the Diet Meal price set forth in Attachment A. Prepackaged meals shall be provided at a price to be mutually agreed in advance. The County shall make available to ARAMARK each day the actual number of inmates, based upon the midnight census, in order to determine the required number of meals for inmates. Staff meals that are necessary shall be determined by ARAMARK in order to have adequate food available for County staff assigned to work that day. When the midnight census is not available in a timely manner, ARAMARK shall prepare and will be paid based on the midnight census for the previous day.

The initial inmate meal menus, including required portion sizes, are set forth in Attachment "C". Changes in the menu must be jointly approved in advance by the Director of Corrections or his designee and ARAMARK without a formal amendment to this Agreement. Staff meals shall be different from the inmates' meals and menus.

In the event the number of actual inmate meals served exceeds the midnight census, ARAMARK and the County shall mutually agree upon a method to be used to count inmate meals and ARAMARK shall then be entitled to charge the County for the greater of the number of inmate meals ordered (based on the midnight census) and the number of inmate meals served.

**B. Price Adjustments:** The per meal prices stated in this Agreement are firm for the period beginning on the Effective Date and ending on June 30, 2011.

**C. Capital Investment:** ARAMARK agrees to make a capital investment to County in an amount up to One Hundred Thousand Dollars (\$100,000.00) (the "Investment"). County agrees to invest the Investment in food service facility renovations and in the purchase and installation of food service equipment in the County's kitchen facilities. Any equipment purchased by ARAMARK on County's behalf shall be purchased as a "sale-for-resale" to the County. County shall hold title to all such equipment upon such resale. County acknowledges that it is a tax-exempt entity and will provide ARAMARK with a copy of the appropriate tax-exempt certificate.

The Investment shall be amortized on a straight-line basis over a period of five (5) years, commencing upon the complete expenditure of the Investment. Upon expiration and non-renewal or termination of this Agreement by either party for any reason whatsoever prior to the complete amortization of the Investment, County shall reimburse ARAMARK for the unamortized balance of the Investment as of the date of expiration or termination.

**D. Additional Services:** Food, beverage and other services required or desired by

the Facility outside the scope of this Agreement shall be provided by ARAMARK upon written authorization by an authorized representative at the Facility where the service is to be provided at mutually agreed upon prices for such services.

ARAMARK's Fresh Favorites program shall be initiated on a date to be mutually agreed upon by the parties.

**E. Initial Four-Week Payment:** Each County fiscal year (July 1 through June 30), prior to the commencement of operations hereunder, ARAMARK shall submit to the County an invoice for an amount equal to the estimate of ARAMARK's total meal billings for one (1) four-week accounting period (the "Initial Payment"). This payment shall be applied against ARAMARK's billing for the final month of the County's fiscal year.

**F. Billing:** ARAMARK shall submit to the County by the tenth (10<sup>th</sup>) day of every month, for the preceding month, an invoice for inmate meals based on the midnight census and new arrivals, if any, and for staff meals ordered or served, whichever is greater, and other goods or services provided by ARAMARK, if any. The invoice shall reflect the preceding month's food services detailing the exact number of meals served on a daily basis as follows:

1. Actual number of adult inmate meals
2. Actual number of staff/visitor meals
3. Any additional food, beverage or other services, as required

ARAMARK shall provide the County with a comprehensive monthly and annual summary of meals, services and credits. This summary shall be forwarded to the Facility Administrator or his designee each month.

**G. Manner of Payment:** Payment shall be made by check payable to ARAMARK Correctional Services, LLC within fifteen (15) days after receipt of the invoice. Such payment shall be sent to:

ARAMARK Correctional Services, LLC  
P.O. Box 406019  
Atlanta, Georgia 30384-6019

(Payments only shall be sent to this address, all other correspondence shall be sent to the address set forth in Section 9 hereof.)

**4. MATERIAL ADVERSE CHANGE:** The financial arrangements in this Agreement are based on conditions existing as of the Effective Date including any representations regarding existing and future conditions made by County in connection with the negotiation and execution of this Agreement. If such conditions change due to causes beyond ARAMARK's control, including, but not limited to, a change in the scope of ARAMARK's services, menu changes, a decrease in the Facility's inmate population or the availability of inmate labor; Federal, State and local sales, and other taxes outside ARAMARK's control, then ARAMARK shall give County written notice of such increase or change, and within thirty (30) calendar days after such



notice, ARAMARK and County shall mutually agree upon modification(s) to offset the impact of the increase or change, which modifications may include any or a combination of the following: an adjustment to ARAMARK's price per meal, modifications to the menu, or modifications to ARAMARK's scope of services. ARAMARK understands and agrees that any material adverse change may be subject to approval by the County's Purchasing Administrator and/or subject to approval of additional funding by the Shelby County Commission.

**5. FEDERAL SURPLUS COMMODITIES:** ARAMARK may use available U.S. Department of Agriculture commodities in providing food service to the inmates and staff of each Facility. ARAMARK shall comply with the rules and regulations of the U.S. Department of Agriculture in securing said commodities. All books and records pertaining to the meal preparation and delivery for each Facility shall be available for a period of thirty-six (36) months after the close of federal fiscal year (October 1 through September 30) to which they pertain for inspection and audit by representatives of the United States Department of Agriculture, and/or the General Accounting Office at any reasonable time or place. Commodities received shall be used solely for the benefit of the County.

ARAMARK shall credit the invoice presented to the County for the value of U.S. Department of Agriculture commodities used, minus any shipping or handling charges actually incurred. The value of the commodities shall be the value set forth on the invoice, bill of lading, delivery receipt or other similar document from the U.S. Department of Agriculture or distributing State agency. If no value is set forth, the County and ARAMARK shall together contact the U.S. Department of Agriculture or distributing State agency to ascertain such value.

**6. ACCESS AND RECORDS:** ARAMARK will maintain accurate books and records in connection with the food service operation and shall retain such records for thirty-six (36) months after the close of the federal fiscal year (October 1, through September 30).

**7. TERM OF AGREEMENT:** The initial term of this Agreement shall commence on August 21, 2008, and shall continue through June 30, 2009. By mutual agreement, the term of this Agreement may be renewed for two (2) additional one year periods at the then existing terms and conditions. Thereafter, the County and ARAMARK may extend this Agreement provided that the extension period, services to be provided, and the prices thereof, for the extension period, have been mutually agreed upon by the County and ARAMARK.

**8. TERMINATION:**

**A. Termination For Convenience:** Either party may terminate this Agreement for convenience, at any time during the term or any renewal or extension, upon thirty (30) days notice to the other party.

**B. Termination For Default:** Either party may terminate this Agreement upon a breach or default of this Agreement by the other party, which is not cured within thirty (30) days after receipt by the defaulting party of a notice from the non-defaulting party, specifying the nature of such breach or default. For purposes of this Paragraph 8.B, breach or default by

ARAMARK is defined as:

(i) ARAMARK or any of its principals, partners or members, including the limited liability company itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to government bidding and governmental contracting;

(ii) ARAMARK has subcontracted, assigned, delegated, or transferred its rights, obligations or interests under this Agreement in violation of Paragraph 12 hereof.

(iii) ARAMARK has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of ARAMARK's assets.

**C. Consequences of Termination:** If this Agreement is terminated under any circumstances, the County shall pay ARAMARK for all inmate and staff meals, and other services, provided by ARAMARK to and including the date of termination, at the prices and within the payment periods set forth in this Agreement. The County's obligation to pay for meals and services provided shall survive the termination or expiration of this Agreement.

Upon the expiration or any termination of this Agreement, the County may choose, if requested by ARAMARK, to purchase ARAMARK's usable inventory of food and supplies. The purchase price for such inventory shall be ARAMARK's invoice cost.

**9. NOTICE:** All notices or other communication hereunder shall be deemed to be duly given when made in writing and delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested and addressed to the party at its respective address first set forth below, or such other address as it may designate, by notice given as herein provided:

County: Shelby County Division of Corrections  
1045 Mullins Station Road  
Memphis, TN 38134-7723  
Attn: Director

and

Shelby County Government  
Contract Administration  
160 N. Main, St., Suite 550  
Memphis, TN 38103

ARAMARK: ARAMARK Correctional Services  
2300 Warrenville Road  
Downers Grove, IL 60515



and

ARAMARK Correctional Services, LLC  
ARAMARK Tower  
1101 Market Street  
Philadelphia, PA 19107  
Attn: President

10. **CONFLICTS OF INTEREST:** ARAMARK covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of this Agreement and no person having any such interest shall be employed. In addition, no officer, agent or employee of the County and no member of its governing body shall participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, association which he/she is directly or indirectly interested or has any personal or pecuniary interest.

11. **CONFIDENTIAL INFORMATION:** All financial, statistical, operating and personnel materials and information, including, but not limited to, software, technical manuals, recipes, menus and meal plans, policy and procedure manuals and computer programs relative to or utilized in ARAMARK's business (collectively, the "ARAMARK Proprietary Information") are and shall remain confidential and the sole property of ARAMARK and constitute trade secrets of ARAMARK. The County shall keep all ARAMARK Proprietary Information confidential and shall use the ARAMARK Proprietary Information only for the purpose of fulfilling the terms of this Agreement. The County shall not photocopy or otherwise duplicate any materials containing any ARAMARK Proprietary Information without the prior written consent of ARAMARK. Upon the expiration or any termination of this Agreement, all materials containing any ARAMARK Proprietary Information shall be returned to ARAMARK.

12. **ASSIGNMENT:** ARAMARK may not assign this Agreement without the County's prior written consent (not to be unreasonably withheld, conditioned or delayed), except that ARAMARK may assign this Agreement, in its sole discretion, to any of its affiliates without any consent being required. The term "affiliate" means any corporation, limited liability company or any other person controlling, controlled by or under common control with, ARAMARK.

13. **PRESS RELATIONS:** ARAMARK shall coordinate and have advance approval of the Director of Corrections on any and all press or media releases.

14. **ENTIRE AGREEMENT:** This Agreement represents the entire agreement and understanding between the County and ARAMARK and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the County and ARAMARK.

15. **SEVERABILITY:** If any provision hereof or the application thereof to any person or circumstance is held to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be



affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

16. **WAIVER:** The failure of ARAMARK or the County to exercise any right or remedy available under this Agreement upon the other party's breach of the terms, covenants and conditions of this Agreement or the failure to demand the prompt performance of any obligation under this Agreement shall not be deemed a waiver of such right or remedy; or the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.

17. **SUBJECT TO FUNDING:** The contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for the contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then the contract will be terminated. In the event of such termination, ARAMARK shall be entitled to receive compensation for any satisfactory work performed as of the termination date and shall be reimbursed for the unamortized balance, if any, due ARAMARK pursuant to Paragraph 3.C hereof.

18. **ORDER OF PRECEDENCE:** It is understood and agreed between the parties that in the event of a variance between the terms and conditions of the Agreement and any exhibit, attachment or amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the following order of precedence applies: (a) the body of the Agreement; (b) Attachment C; and (c) Attachment B.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

[The remainder of this page is left blank intentionally.]

**ARAMARK CORRECTIONAL  
SERVICES, LLC**

By: \_\_\_\_\_  
Name: David Kimmel  
Title: Vice President, Finance

**SHELBY COUNTY GOVERNMENT**  
State of Tennessee

By: \_\_\_\_\_  
Name: AC Wharton Jr.  
Title: County Mayor

APPROVED:

\_\_\_\_\_  
Contract Administrator  
Assistant County Attorney

COMPANY ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared David Kimmel, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be an officer authorized by appropriate action and/or Resolution to execute the preceding instrument of ARAMARK Correctional Services, LLC, the within named bargainer, a limited liability company, and that he as such Vice President, Finance, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Vice President, Finance.

WITNESS my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

<p align="center"><b>Attachment A</b>  <b>Shelby County Corrections Center</b></p>
--

	<u>Effective</u> <u>7/1/2008 - 6/30/2009</u>	<u>Effective</u> <u>7/1/2009 - 6/30/2010</u>	<u>Effective</u> <u>7/1/2010 - 6/30/2011</u>
Inmate Meals	\$1.253	\$1.303	\$1.355
Trusty Meals (including kitchen)	\$1.253	\$1.303	\$1.355
Diet Meals*	\$1.820	\$1.893	\$1.969
AOC Meals	\$1.253	\$1.303	\$1.355
Officer Meals	\$1.820	\$1.893	\$1.969

The foregoing prices are based on the 3000 calorie Menu Option A in ARAMARK's proposal. All menus may be changed from time to time as mutually agreed upon by the parties without formally amending this Agreement.

\*Special religious meals, such as meals for Passover or Ramadan, shall be provided at the Diet Meal price.





## Purchasing Department

160 N. Main, Suite 550  
Memphis, TN 38103

(901) 545-4365  
Fax: (901) 545-4531

# Shelby County Tennessee

A C Wharton, Jr., Mayor

## Memorandum

To: Honorable A C Wharton, Jr.  
Shelby County Mayor

From: Clifton Davis, Administrator  
Purchasing Department *CD*

Date: July 9, 2008

Re: RFP #08-003-57, Food Services (Addendum for Correctional Center)

In addition to being advertised, this RFP was issued directly to fourteen (14) vendors identified in Shelby County Government's vendor database. Only one (1) company submitted a proposal indicating their interest in providing food services to the Correctional Center as identified in the Addendum to the RFP.

	<u>EOC Rating</u>	<u>Consultant Fees</u>
1. <b>ARAMARK Correctional Services</b> Correctional Center	A	\$4,150,000.00 (Not-to-Exceed)

The evaluation committee comprised of Correctional Center staff members and Purchasing evaluated the response and determined that the proposal submitted by **ARAMARK Correctional Services** thoroughly demonstrated their ability to meet the requirements of the Scope of Services described in the addendum to the RFP. It is the recommendation of the evaluation committee, with the concurrence of the Purchasing Department, that **ARAMARK Correctional Services** be awarded the contract for Correctional Center food services.

The evaluation committee concluded that the proposal submitted by **ARAMARK Correctional Services** is recommended based upon the following:

- A. **ARAMARK Correctional Services** has provided satisfactory food services for the Shelby County Sheriff's Department for the past five (5) years;
- B. **ARAMARK Correctional Services** pricing for the Correctional Center is considered fair and reasonable and in alignment with the pricing offered Shelby County Sheriff's Department;
- C. The cost as proposed by **ARAMARK Correctional Services** represents approximately \$372,500 in savings from the budgeted in-house cost.

- D. **ARAMARK Correctional Services** has demonstrated a complete understanding of the requirements and has provided these services in various correctional facilities throughout the country; and
- E. No other vendors have shown interest in obtaining this business.

A copy of the department's recommendation is attached.

EOC Rating Codes:

A Compliance – 90% or more

B Compliance – 80%-89.9%

C Compliance - 50%-79.9%

D Less than 15 employees (automatically qualify)

E Approval by EOC Board of Appeals

F Exception granted by CAO or Administrator of EOC

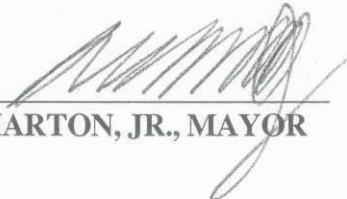
Please indicate your approval or disapproval of this selection in the space provided below:

APPROVED: ✓

APPROVED WITH CHANGES: \_\_\_\_\_

DISAPPROVED: \_\_\_\_\_

DATE: 7/10/05

  
A C WHARTON, JR., MAYOR

cc: John Trusty, Correctional Center





# Shelby County Tennessee

A C Wharton, Jr., Mayor

March 6, 2008

## Addendum 1

### RFP 08-003-57

For Jail Food Services is hereby revised to read as follows;

**Please Note: Pre-Proposal Conference**

A **MANDATORY** pre-proposal conference will be held on **Thursday, March 13, 2008 @ 9:00 a.m.** to address your questions and to tour the facility. *All interested respondents are required to attend this meeting.* The pre-bid conference will be held at the County Jail located at 201 Poplar Avenue, Memphis TN 38103. If you plan to attend you must contact Purchasing via email @ [celeste.walker@shelbycountyttn.gov](mailto:celeste.walker@shelbycountyttn.gov) to confirm your attendance with a Representatives name, Company & Contact Number. A confirmation email will be returned with specific information concerning the conference.



# Shelby County Tennessee

A C Wharton, Jr., Mayor

March 25, 2008

## Addendum 2

### RFP 08-003-57

For Jail Food Services is hereby revised to read as follows:

Addendum Additions and Changes: to include Corrections Food Services

All items in the original RFP and Addendum I remain in effect unless modified in this addendum.

**Pre-Proposal Conference** - A MANDATORY pre-proposal conference will be held on Wednesday, April 2, 2008 @ 9:00 a.m. to address your questions and to tour the facility. *All interested respondents are required to attend this meeting.* The pre-bid conference will be held at the Shelby County Correction Center located at 1045 Mullins Station Rd., Memphis TN 38134. All attendees must enter thru the main gate. If you plan to attend you must contact Purchasing via email to [deborah.cairncross@shelbycountyttn.gov](mailto:deborah.cairncross@shelbycountyttn.gov) to confirm your attendance with a Representatives name, Company & Contact Number. A confirmation email will be returned with specific information concerning the conference.

## I. INTRODUCTION

This addendum adds the Shelby County Division of Corrections to the RFP. The Division of Corrections is managed by a Director who reports to the County Mayor. The Sheriff is responsible for management and operation of the Jail. The Division of Corrections has an average daily population of 2700 inmates over the last several years. During the current year, population is averaging 3100 inmates. The Division operates two adjacent facilities which are also adjacent to Jail East. These facilities are:

Main Compound – 1045 Mullins Stations Road, Memphis, TN 38134

Adult Offender Center (AOC) – 961 Sycamore View Road, Memphis, TN 38134

**II. MINIMUM REQUIREMENTS:** No changes, same as original RFP document

### III. CORRESPONDENCE

Additional questions as related to the new sites may be addressed in the same manner as originally provided. The deadline for submitting questions will be April 3, 2008 by 12:00 p.m. (CST).

### IV. PROPOSAL SUBMISSION AND DEADLINE

All proposals must be received at the address listed above no later than April 9, 2008 @ 3:00 p.m. (CST). Only the date is being changed.

### V. PROPOSAL TIMELINE

Shelby County reserves the right to modify this timeline at any time. If the due date for proposals is changed, all prospective Proposers shall be notified.

Request for Proposals Released	<b>Monday, March 3, 2008</b>
Addendum I Issued	<b>Thursday, March 6, 2008</b>
Addendum II Issued	<b>Monday, March 25, 2008</b>
Pre-Proposal Conference for Jail	<b>Thursday, March 13, 2008</b>
Pre-Proposal Conference for Corrections(Add II)	<b>Wednesday, April 2, 2008 at 9:00 a.m. (CST)</b>
Proposal Due Date (revised)	<b>Monday, April 9, 2008 by 3:00 p.m. (CST)</b>
Notification of Award	<b>May 2008</b>
Services to begin	<b>July 1, 2008</b>

The County may reproduce any of the Proposer's proposal and supporting documents for internal use or for any other purpose required by law.

### VI. PROPOSAL CONDITIONS - No changes, same as original RFP document

### VII. GENERAL REQUIREMENTS

#### a. Background

The Corrections Division during the most recent eight months provides food services for an approximate average daily population of 3100 (historical average of 2700 over several years) inmates in its facilities located in East Memphis. The food services for Corrections have always been provided with a combination of Division employees and inmate labor. The Division feeds inmates a hot meal for breakfast and dinner and provides sack lunches for lunch. The Division also provides a hot meal for staff three times a day and normally feeds 250 to 300 staff per day.

The Division has two main kitchen facilities and additional serving locations. Lunch meals for all inmates are delivered to housing units by food service staff with inmate labor. All inmates housed at the AOC are served in the AOC inmate dining room for breakfast and dinner. All female inmates housed in the Women's Building at the Correction Center are served in the W Building inmate dining room for breakfast and dinner. Most male inmates (except as stated below) housed at the Correction Center are served in the Correction Center inmate dining room for breakfast and dinner. Separate feeding is conducted in E & J Buildings (high security) for all inmates housed in



those buildings. In addition, selected inmates housed in the Main Building in medical, juvenile and pre-trial areas are feed in their housing units. Food service staff and inmate labor deliver all meals not served in an inmate dining room.

The Division uses inmate labor in the entire food service operation including its warehouse. This presently provides work for 300-350 inmates per week with each inmate assigned to work 4 days per week for 5 or 8 hour shifts. This reduces inmate idleness and allows for time credits to reduce time served. Use of a similar number of inmates should be a consideration in your response.

### **VIII. AWARD OF CONTRACT**

Proposers are advised that the lowest cost proposal will not necessarily be awarded the contract, as the selection will be based upon qualification criteria as deemed by the County and as determined by the selection committee and the County Mayor. The County may elect to award the contract to one provider for the Jail and another to the Division of Corrections or all to one provider. The County reserves the right to not award a contract for any portion of the RFP.

Due to county budgetary considerations and other contractual obligations, accounting and billing for services must be made separately for the Jail and the Division of Corrections. Proposals submitted should separate costs for each facility and identify any savings to county by awarding all facilities to one vendor.

### **IX. PURPOSE**

#### **Services Required**

Information contained in the initial RFP applies to the Jail locations.

#### **Services Required For Division of Corrections**

Consultant will be required to perform the following Services:

1. Have qualified and trained staff with sufficient back-up personnel to successfully complete the contract requirements.
2. A corrections-experienced Registered Dietitian must be available for menu development and provide written approval for menus used.
3. Include a complete staffing plan, by shift, by positions, and include hours to be worked and pay rates.
4. Because of the complexity and critical nature of the food service operation at Shelby County, the on-site General Manager should have a minimum of ten (10) years of experience in correctional food service, including at least two years experience in a facility of at least 2,000 beds. The General Manager must live within 30 miles of the facilities. A complete resume indicating correctional experience, current contract information, and references listing the names and locations of current clients.
5. The Food Service Director will have a minimum of two (2) years correctional food service experience. A complete resume must be provided.
6. The successful proposer to have central office capability to supervise and monitor the program ensuring satisfactory provision of services. In addition, the vendor must have an alternate emergency preparation site in the Shelby County area.

7. Submit a certified copy of the current financial report of the company and audited financial statements for the past three years. If the company is a subsidiary or division of a corporation, the relationship of the vendor must be clearly delineated in the proposal.
8. Submit a list of five (5) references, including name of institution, address, and contact person and phone number.
9. List all contracts terminated in the past three (3) years and the reason for termination.
10. Develop an operating plan for food service that best meets the stated objectives and needs of Shelby County. Include Quality Assurance plan and proposed staffing and personnel plan.
11. Present an operating plan that incorporates use of inmate labor. The present use of inmates involves 103 men in the AOC food service operation, and at the Correction Center 28 women in the W building food service function as well as 212 men in the rest of the food service and warehouse operations.
12. Food Service should include at least three (3) meals daily with the lunch meal being a sack lunch. A significant percentage of inmates leave the Division for work lines during the day and must take the lunch with them when they leave each morning.
13. Provide menu quality offered for price proposed. Include nutritional quality, menu acceptability and stated menu standards.
  - a. Menus must provide weekly average of 3000 calories per day for adults distributed between three meals.
  - b. Not to exceed a monthly average of 35% of calories as fat unless specifically requested by the County.
  - c. Weekly average of 80 grams of protein per day.
  - d. Optional food items must be available for those inmates on a non-pork diet for religious or other reasons.
  - e. Medical diets shall be provided upon request.
  - f. Appropriate condiments must be served with meal.
  - g. Hamburger Buns and Hot Dog Buns are required when Hamburger or Hot Dog are listed on the menu.
  - h. No organ meats or textured vegetable protein shall be allowed in any ground meat.
  - i. Coffee is required daily at the breakfast meal.
  - j. The menu must be the same for all inmates at that meal regardless of the location.
  - k. The present dining facilities use a tray with five (5) sections for food with an item each meal in each slot. Generally, one slot includes a minimum of 4 oz. of the main entree, two slots are for 4-6 oz. of a vegetable and/or fruit, one slot is for bread and one slot is for a dessert item of 4-6 oz. In a prison environment, unacceptable food can lead to disturbances. Proposal should insure similar portions since perception of food quantity as well as adequate food to feel full assists in controlling inmate attitudes.
  - l. Include a copy of an actual menu to be served in the proposal.
14. Contractor will be responsible for maintaining and repair of all kitchen equipment. The vendor must provide a detailed plan of maintenance procedures, including a detailed preventive maintenance plan. The County reserves the right to inspect all preventive maintenance and repair performed by the vendor.
15. Vendor must provide a detailed Emergency Contingency plan specific to the Shelby County Division of Corrections facilities, not a generic plan. This should include detailed plans for dealing with lockdowns, power outages, traffic accidents, work stoppages, and weather or national security emergencies.
16. Proposals which contain false or misleading statements, or which provide references



that do not support an attribute or condition contended by the Vendor, may be rejected.

17. Provide a price per meal for all categories of meals to be served.

### **Minimum Expectations on Deliverables**

1. To deliver high quality food service that can be audited against established nutritional and health standards.
2. To operate the food service program using correction experienced and professionally trained personnel.
3. To operate the food service program in cost-effective manner with full reporting to the designated contract monitor with the Shelby County Division of Corrections.
4. To implement a written food service plan with clear objectives, policies, procedures and annual evaluation of compliance.
5. To maintain an open collaborative relationship with the administration and staff of the Shelby County Division of Corrections and other County offices.
6. To maintain standards established by the Shelby County Division of Corrections, as well as State Correctional Food Service standards.
7. To offer a comprehensive program to continuing staff training.
8. To operate the food service program in a humane manner with respect to the inmates' right to basic health and nutritional standards.

**X. CONTRACT REQUIREMENTS** - No changes, same as original RFP document

### **XI. PROPOSAL SUBMISSION**

- A. GENERAL** – Change to item 4 only, all other items remain the same as original RFP document. Item 4 should read:

**Hard copy proposals must be received by no later than 3:00 p.m. (CST) on April 9, 2008, at Shelby County Government Purchasing Department, 160 N. Main St., Suite 550, Memphis, TN 38103.**

- B. PRE-PROPOSAL PRESENTATION** - Change to item 1 only, all other items remain the same as original RFP document. Item 1 should read:

One (1) original copy (clearly identified as original) and **nine (9) copies** of the proposal are required.

- C. PROPOSAL FORMAT** - Change to item 4 only, all other items remain the same as original RFP document. Item 4 should read:

**4. Cost and Fees**

List cost and fees separately for the Jail and Corrections in items a., b. and c. If you propose lower cost and fees if all locations are awarded to one vendor, list those as a separate option by location to your base proposal.



# Shelby County Tennessee

A C Wharton, Jr., Mayor

## **Request for Proposal Shelby County Government Purchasing Department**

160 N. Main, Suite 550  
Memphis, TN 38103

*Issued: March 3, 2008*

**Due: March 26, 2008 no later than 3:00 P.M. (Central Standard Time)**

**RFP #08-003-57**

### **Jail Food Services**

Shelby County Government is soliciting written proposals, on a competitive basis from qualified Food Service Providers to supply food services to the inmates and staff located at the Shelby County Main Jail, 201 Poplar Avenue, Memphis, TN 38103 as well as the East Jail location at 6201 Haley Rd, Memphis, TN 38134. Information regarding this RFP is located on the County's website at [www.shelbycountyttn.gov](http://www.shelbycountyttn.gov). Go to "Purchasing Bids" under Online Services on the home page to locate the above-described RFP.

The proposal, as submitted, should include all rates and information related to the services requested by the RFP specifications. If selected, your proposal will be the basis for negotiating a contract with Shelby County Government.

Your proposal must be received in the office of the Deputy Administrator of Purchasing **no later than 3:00 p.m. on Monday, March 26, 2008.** Proposals should be addressed to:

**Celeste S. Walker, Deputy Administrator**  
Shelby County Government  
160 N. Main, Rm. 550  
Memphis, TN 38103

The package containing an original copy (clearly identified as original) and five (5) copies of your proposal must be sealed and marked with the Proposer's name and "CONFIDENTIAL, "JAIL FOOD SERVICES" RFP #08-003-57" noted on the outside.

**Please Note: Pre-Proposal Conference**

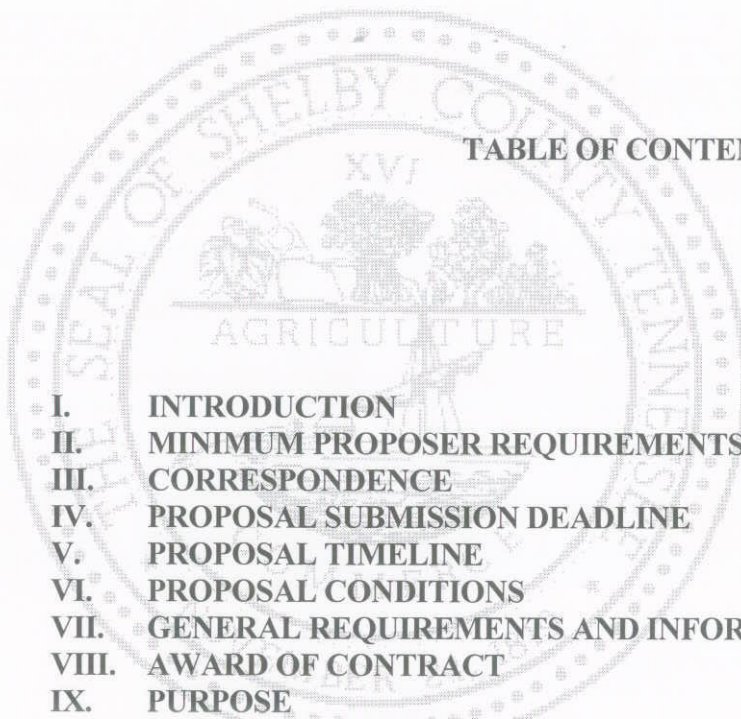
A **MANDATORY** pre-proposal conference will be held on **Thursday, March 13, 2008 @ 9:00 a.m.** to address your questions and to tour the facility. *All interested respondents are required to attend this meeting.* The pre-bid conference will be held at the County Jail located at 201 Poplar Avenue, Memphis TN 38103. If you plan to attend you must contact Purchasing via email @ [celeste.walker@shelbycountyttn.gov](mailto:celeste.walker@shelbycountyttn.gov) to confirm your attendance with a Representatives name, Company & Contact Number. A confirmation email will be returned with specific information concerning the conference.

Sincerely,

Celeste S. Walker, Deputy Administrator  
Purchasing Department Shelby County Government

cc: Chief James Coleman  
Harvey Kennedy





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- III. CORRESPONDENCE**
- IV. PROPOSAL SUBMISSION DEADLINE**
- V. PROPOSAL TIMELINE**
- VI. PROPOSAL CONDITIONS**
- VII. GENERAL REQUIREMENTS AND INFORMATION**
- VIII. AWARD OF CONTRACT**
- IX. PURPOSE**
- X. CONTRACT REQUIREMENTS**
- XI. PROPOSAL SUBMISSION**
- XII. PROPOSAL EVALUATION AND SELECTION**

*Note: Please make sure you pay close attention to Sections: I-V, IX & XI. These sections will clearly outline what information is required to properly respond and prepare your RFP response.*

## I. INTRODUCTION

Shelby County Government desires to solicit proposals from qualified Food Service Providers to supply food services for inmate and staff feeding, seven days per week for an approximate Average Daily Population of 2700 inmates at the locations listed below. This Request for Proposal ("RFP") is being released to invite interested and qualified companies to prepare and submit proposals in accordance with instructions provided where the successful candidate will be selected and invited to enter into a contractual relationship with Shelby County for the Services outlined in this RFP. In this RFP, the terms Proposer and Consultant are used interchangeably unless the context indicates otherwise. The facilities included in this request are:

Main Jail – 201 Poplar Avenue Memphis, TN 38103  
Jail East – 6201 Haley Road Memphis, TN 38134

## II. MINIMUM PROPOSER REQUIREMENT

All Proposers must:

1. Have at least five (5) years of previous correctional feeding experience with proven effectiveness in administering large scale corrections food service programs of at least 2,000 inmates.
2. Have proven ability for a contract start-up within thirty (30) days of full contract execution.
3. Must have the ability to provide an On-site General Manager as well as a Food Director for the contract.
4. Possess and maintain American Correctional Association (ACA) certification for Food Services (including any new/additional requirements outlined by the Association during the term of the contract).
5. Currently have at least three (3) similar size facilities under contract for the same services requested who obtained accreditation as a result of your efforts.
6. Apply for an Equal Opportunity Compliance (EOC) certification number through our EOC Administration (see the details outlined in section VII General Requirement/e. Selection Criteria)
7. Adhere to all Title VI requirements and provide proof/documentation if necessary

***Please Note: As a part of doing business with Shelby County, each individual, company or organization is required to obtain a vendor number and an "Equal Opportunity Compliance" certification number. The vendor # is obtained through the Purchasing Department and the EOC certification is obtained through the Shelby County EOC Administration. . If you have any***



questions regarding the vendor # please call the Purchasing Department @ 901-545-4360 or download the Bidder's List Application & the W-9 at

[http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/dotContent/Government/CountyServices/AdminandFinance/bidder\\_app.pdf](http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/dotContent/Government/CountyServices/AdminandFinance/bidder_app.pdf) and

<http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/dotContent/Government/CountyServices/AdminandFinance/fw9.pdf>

If you have any questions regarding the EOC qualification, please call 901-545-4336 or download the document at

[http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/Government/CountyServices/AdminandFinance/eoc\\_contract\\_comply\\_v2.pdf](http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/Government/CountyServices/AdminandFinance/eoc_contract_comply_v2.pdf)

**\*\*You may respond to this solicitation if you have at least applied for a vendor # and the certification. Please include a copy of the applications that you submitted with your proposal response.**

### III. CORRESPONDENCE

All correspondence, proposals and questions concerning the RFP are to be submitted to:

Celeste S. Walker, Deputy Administrator  
Shelby County Government  
160 N. Main St. Suite 550  
Memphis, TN 38103

Respondents requesting additional information or clarification are to contact Ms. Celeste S. Walker in writing at [celeste.walker@shelbycountyttn.gov](mailto:celeste.walker@shelbycountyttn.gov) or at the address listed above. Questions should reference the section of the RFP to which the question pertains and all contact information for the person submitting the questions. **IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS WILL NOT BE ANSWERED. The deadline for submitting questions will be March 14, 2008 by 12:00 p.m. (CST).** These guidelines for communication have been established to ensure a fair and equitable process for all respondents.

Please be aware that contact with any other personnel (other than the person clearly identified in this document) within Shelby County regarding this RFP may disqualify your company from further consideration.

### IV. PROPOSAL SUBMISSION & DEADLINE

All proposals must be received at the address listed above no later than **March 26, 2008 @ 3:00 p.m. (CST)**. Facsimile or e-mailed proposals will not be accepted since they do not contain original signatures. Postmarks will not be accepted in lieu of actual receipt. Late or incomplete proposals may

not be opened and considered. Under no circumstances, regardless of weather conditions, transportation delays, or any other circumstance, will this deadline be extended.

## **V. PROPOSAL TIMELINE**

Shelby County reserves the right to modify this timeline at any time. If the due date for proposals is changed, all prospective Proposers shall be notified.

Request for Proposals Released	<b>Monday, March 3, 2008</b>
Addendum Issued	<b>Thursday, March 6, 2008</b>
Pre-Proposal Conference	<b>Thursday, March 13, 2008</b>
Proposal Due Date ( <i>revised</i> )	<b>Monday, March 26, 2008 by 3:00 p.m. (CST)</b>
Notification of Award	<b>May 2008</b>
Services to begin	<b>July 1, 2008</b>

The County may reproduce any of the Proposer's proposal and supporting documents for internal use or for any other purpose required by law.

## **VI. PROPOSAL CONDITIONS**

### **a. Contingencies**

This RFP does not commit the County to award a contract. The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so. The County will notify all Proposers, in writing, if the County rejects all proposals.

### **b. Modifications**

The County reserves the right to issue addenda or amendments to this RFP.

### **c. Proposal Submission**

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Proposer's responsibility to ensure that its proposals arrive on or before the specified time.

### **d. Incurred Costs**

This RFP does not commit the County to pay any costs incurred in the preparation of a proposal in response to this RFP and Proposers agree that all costs incurred in developing this RFP are the Proposer's responsibility.



**e. Final Authority**

The final authority to award a contract rests solely with the Shelby County Purchasing Department.

**f. Proposal Validity**

Proposals submitted hereunder will be firm for at least on hundred twenty (120) calendar days from the due date unless otherwise qualified.

**g. LOSB**

The County encourages the utilization of locally-owned small businesses as sources of subcontract work. The County notifies all respondents that all firms and/or individuals shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Title VI of the Civil Rights Act of 1964, as amended.

**LOCALLY OWNED SMALL BUSINESS PURCHASING PROGRAM RULES AND REGULATIONS:**

(i) The Administrator of Purchasing in conjunction with the Administrator of EOC shall identify certain goods and services required by the County to be set aside for special purchasing procedures for locally owned small businesses.

(ii) Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (i) above.

(iii) The Administrator of Purchasing shall, in conjunction with the Administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of \$250,000 or more. Contracts amounting to at least ten (10%) of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this section, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the County for subcontracts that may be assigned to general contractors.

(iv) After adhering to all other bidding and purchasing requirements of the County, not inconsistent with this part, if no bids are received from locally owned small businesses, then the County may solicit bids for the goods or services from all other sources.

(v) On all purchases and/or contracts entered into by the County, the Purchasing Administrator or his or her designee shall have the right to negotiate with any supplier of goods or services to the County for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.

(vi) Failure by a supplier or contractor to include locally owned small business sub-contractors or suppliers in its bid or contract may be grounds for rejection of said bid or contract unless the supplier or contractor can show documented evidence of good cause why none were included.

(vii) Any locally owned small business awarded a contract or purchase order under this section shall not sublet, subcontract or assign any work or services awarded to it without the prior written consent of the Mayor or the Purchasing Administrator.

(viii) As to those purchases below the requirement for a formal bid solicitation (currently, under \$15,000) and not included in the locally owned small business set aside, the Administrator of Purchasing shall determine if any locally owned small business offers that product or service. If so, at least one such eligible locally owned small business should be included in the vendors contacted for an opportunity to bid, and the Administrator of Purchasing may, at his discretion, designate in a purchase order the purchase of such goods and services from the identified locally owned small business.

(ix) In those situations where a locally owned small business as defined herein, engages in open competitive bidding for County contracts, the Administrator of Purchasing shall provide for a preference for the locally owned small business where responsibility and quality are equal. Said preferences shall not exceed five percent (5%) of the lowest possible bidder meeting specifications. The preference shall be applied on a sliding scale in the following manner:

a. A preference of up to five percent (5%) shall be allowed for contracts up to \$500,000.00;

b. A preference of up to three and five-tenths percent (3.5%) shall be allowed for contracts up to \$750,000.00;

c. A preference of two and one-half percent (2.5%) shall be allowed for contracts up to \$1,000,000.00;

d. A preference of two percent (2%) shall be allowed for contracts that exceed \$1,000,000.00.



- (x) For construction contracts over \$2,000,000.00, the Administrator of Purchasing shall provide for a preference of two percent (2%) to general contractors meeting the requirements of Section 1, Subparagraph B, if fifty percent (50%) or more of the total work comprising the bid has been or will be awarded to certified locally owned small businesses. The fifty percent subcontracting threshold must be met prior to contract execution.
- (xi) The Administrator of Purchasing may divide a single bid package for any purchase of goods and services into two or more smaller bid packages in any case that the Administrator of Purchasing reasonably believes that the smaller bid packages will result in a greater number of bids by locally owned small businesses.
- (xii) The Administrator of Purchasing, upon approval of the County Mayor, may establish special insurance and bonding requirements for certified locally owned small businesses so long as they are not in conflict with the laws of the State of Tennessee.
- (xiii) The Administrator of Purchasing, with the approval of the County Mayor, shall adopt and promulgate, and may from time to time, amend rules and regulations not inconsistent with the provisions of this ordinance, governing the purchase of goods and services from locally owned small business concerns to effectuate and implement the Locally Owned Small Business Purchasing Program within the intent of this ordinance.
- (xiv) The Administrator of EOC shall, in conjunction with the Administrator of Purchasing, provide a written quarterly report to the Mayor and Board of Commissioners which shall include a summary of the purchases selected for this program, a listing of the contracts awarded to locally owned small businesses for the period, and the dollar amounts of each such contract, and the percentage which such contracts bear to the total amount of purchases for the period.

#### **h. Living Wage**

Shelby County Government Ordinance # 328 "Living Wages" is hereby incorporated into this Request for Proposal and any resulting contract. Please make sure that you review and apply the requirements of the ordinance to your proposal response. Failure to do so will result in disqualification from the review and award process. You may view and print the ordinance as a separate attachment for this RFP (*please do not forget to download ALL the additional attachments*).



## **VII. GENERAL REQUIREMENTS**

### **a. Background**

The Jail system currently provides food services for an approximate average daily population of 2700 inmates at the two locations indicated in this proposal. The food services for these two locations have been provided by an outside contractor since 2002. It is expected that around 9000 meals will be served to our inmates and around 400 to 500 meals to our staff (officers).

### **b. Scope of Contract**

The County wishes to engage in a contractual relationship with the best-qualified Consultant selected through a competitive process. The Consultant must be prepared to begin immediately upon receipt of a Notice to Proceed.

### **c. Project Time Frame**

The initial term of the contract will for a term of one (1) year from July 1, 2008 through June 30, 2009 with the option to renew for two (2) additional one (1) year periods with the same terms and conditions. The Provider must be prepared to begin immediately upon receipt of a Notice to Proceed.

### **d. Reservation of Rights**

The County reserves the right, for any reason to accept or reject any one or more proposals, to negotiate the term and specifications for the services provided, to modify any part of the RFP, or to issue a new RFP.

### **e. Selection Criteria**

Each response will be evaluated on the criteria outlined in Section XII of this document. Each bidder should set out in it's response to this RFP to clearly identify the qualifications of its company and each individual who will work on this project.

As part of the qualification process each vendor will be required to apply for an EOC # and provide workforce utilization information. Please contact the EOC Administration @ 901-545-4336 to obtain the necessary documents and to ask any questions that you may have regarding this information. The EOC application is available online at the following link:

[http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/Government/CountyServices/AdminandFinance/eoc\\_contract\\_comply\\_v2.pdf](http://www.shelbycountyttn.gov/FirstPortal/dotShowDoc/Government/CountyServices/AdminandFinance/eoc_contract_comply_v2.pdf)

During the evaluation process, Shelby County Government reserves the right to consider the vendor's EOC rating in the evaluation.

**f. Additional Information and References**

Any additional information that would be helpful to the County in evaluating a proposal, including a list of current and former clients with a similar profile to Shelby County, should be submitted. At least three (3) former clients who have terminated in the last five (5) years should be included on this list.

**VIII. AWARD OF CONTRACT**

Proposers are advised that the lowest cost proposal will not necessarily be awarded the contract, as the selection will be based upon qualification criteria as deemed by the County and as determined by the selection committee and the County Mayor.

**IX. PURPOSE**

To select the best-qualified company and award a County-approved contract for professional services to perform the Services and to satisfactorily complete all activities associated with the Services.

**Services Required**

Consultant will be required to perform the following Services:

1. Have qualified and trained staff with sufficient back-up personnel to successfully complete the contract requirements. Personnel must include a full-time, corrections-experienced Registered Dietitian available for menu development.
2. Include a complete staffing plan, by shift, by positions, and include hours worked and pay rates.
3. Because of the complexity and critical nature of the food service operation at Shelby County, the on-site General Manager should have, at a minimum, ten (10) years of experience in correctional food service, including at least two years experience in a facility of at least 2,000 beds. The General Manager must live within 30 miles of the facilities. A complete resume indicating correctional experience, current contract information, and the names and locations of current clients.



4. The Food Service Director will have minimum two (2) years correctional food service experience. A complete resume must be provided.
5. Have central office capability to supervise and monitor the program ensuring satisfactory provision of services. In addition, the vendor must have an alternate emergency preparation site in the Shelby County area.
6. Submit a certified copy of the current financial report of the company and audited financial statements for the past three years. If the company is a subsidiary or division of a corporation, the relationship of the vendor must be clearly delineated in the proposal.
7. Submit a list of five (5) references, including name of institution, address, and contact person and phone number.
8. List all contracts terminated in the past three (3) years and the reason for termination.
9. Demonstrate ability to comply with American Correctional Association standards for local detention facilities and attain ACA certification for food service. Vendors will indicate at least three similar size facilities currently under contract which have attained accreditation as a result of their efforts.
10. Develop an operating plan for food service that best meets the stated objectives and needs of Shelby County. Include Quality Assurance plan and proposed staffing and personnel plan.
11. Food Service should include at least three (3) meals daily
12. Provide menu quality offered for price proposed. Include nutritional quality, menu acceptability and stated menu standards.
  - a. Menus must provide weekly average of 3000 calories per day for adults distributed between three meals.
  - b. Not to exceed a monthly average of 35% of calories as fat unless specifically requested by the County.
  - c. Weekly average of 80 grams of protein per day.
  - d. No pork or pork by-products.
  - e. Medical diets shall be provided upon request.
  - f. Appropriate condiments must be served with meal.
  - g. Hamburger Buns and Hot Dog Buns are required when Hamburger or Hot Dog are listed on the menu.
  - h. No organ meats shall be allowed in any ground meat.
  - i. Coffee is required daily at the breakfast meal.
  - j. Include a copy of an actual menu to be served in the proposal.
13. Contractor will be responsible for maintaining and repair of all kitchen equipments. The vendor must provide a detailed plan of maintenance procedures, including a detailed preventive maintenance plan. The County reserves the right to inspect all preventive maintenance and repair performed by the vendor.
14. Vendor must provide a detailed Emergency Contingency plan specific to the Shelby County Jail facilities, not a generic plan. This should include detailed plans for dealing with lockdowns, power outages, traffic accidents, work stoppages, and weather or national security emergencies.
15. Vendor will prepare required portions based on the menu, and transport in bulk, utilizing their own vehicle to Jail East.

16. Proposals which contain false or misleading statements, or which provide references that do not support an attribute or condition contended by the Vendor, may be rejected.
17. Provide a price per meal for all categories of meals to be served.

### **Minimum Expectations on Deliverables**

1. To deliver high quality food service that can be audited against established nutritional and health standards.
2. To operate the food service program using correction experienced and professionally trained personnel.
3. To operate the foodservice program in cost-effective manner with full reporting to the Shelby County Sheriff's Office.
4. To implement a written food service plan with clear objectives, policies, procedures and annual evaluation of compliance.
5. To maintain an open collaborative relationship with the administration and staff of the Shelby County Sheriff's Office and other County offices.
6. To maintain standards established by the Shelby County Sheriff's Office, as well as ACA, State and Federal Correctional Food Service standards.
7. To offer a comprehensive program to continuing staff training.
8. To operate the food service program in a humane manner with respect to the inmates' right to basic health and nutritional standards.

## **X. CONTRACT REQUIREMENTS**

The successful Proposer will be expected to enter into a contract incorporating the following terms and conditions, and such additional terms and conditions standard to services of this type.

### **a. General Requirements**

1. Control. All services by the Provider will be performed in a manner satisfactory to the County, and in accordance with the generally accepted business practices and procedures of the County.
2. Provider's Personnel. The Provider certifies that it presently has adequate qualified personnel to perform all services required under this Contract. All work under this Contract will be supervised by the provider. The Provider further certifies that all of its employees assigned to serve the County have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Consultant who, in the opinion of the County, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with services under this Contract.



3. Independent Status. (a) Nothing in this Contract shall be deemed to represent that the provider, or any of the provider's employees or agents, are the agents, representatives, or employees of the County. The Provider will be an independent consultant over the details and means for performing its obligations under this Contract. Anything in this Contract which may appear to give County the right to direct the Provider as to the details of the performance of its obligations under this Contract or to exercise a measure of control over the Provider is solely for purposes of compliance with local, state and federal regulations and means that the Consultant will follow the desires of the County only as to the intended results of the scope of this Contract.

(b) It is further expressly agreed and understood by Provider that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the County; that the provider has been retained by the County to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the County by the Provider for services performed shall be on the Consultant's letterhead.

4. Termination Or Abandonment. (a) It shall be cause for the immediate termination of this Contract if, after its execution, the County determines that either:

- (i) the Provider or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting.
- (ii) The Provider has subcontracted, assigned, delegated, or transferred its rights, obligations or interests under this Contract without the County's consent or approval.
- (iii) The Provider has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of Provider's assets.

(b) The County may terminate the Contract upon five (5) days written notice by the County or its authorized agent to the Provider for Provider's failure to provide the services specified under this Contract.

(c) This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the Provider shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; however, the Provider shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.



(d) All work accomplished by Provider prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered.

(e) Notwithstanding the above, the Provider shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Provider and the County may withhold any payments to Consultant for the purpose of setoff until such time as the exact amount of damages due the County from the Provider is determined.

5. Subcontracting, Assignment Or Transfer. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the Provider from performance of its duties under this contract. The County shall not be responsible for the fulfillment of the Provider's obligations to its transferors or sub-providers. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the assignment.

6. Conflict Of Interest. The Provider covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The Provider warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-provider to the Provider in connection with any work contemplated or performed relative to this Contract.

7. Covenant Against Contingent Fees. The Provider warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Provider, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Provider any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

8. Employment Of County Workers. The Provider will not engage, on a full or part-time, or other basis during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the County.

9. Arbitration. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the Consultant and the County will be referred to the Shelby County Contract Administrator or his/her duly authorized representative, whose decision regarding same will be final.

10. General Compliance With Laws. (a) If required, the Provider shall certify that it is qualified and duly licensed to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all licenses,



permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

(b) The Provider is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, the Americans with Disabilities Act (ADA), Title XI and all state and local laws, rules and regulations pertaining to electrical requirements of residential construction and renovation.

(c) This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this contract the Provider agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

11. Nondiscrimination. The Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Provider on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Provider shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

12. Entire Agreement. This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral Contracts between the parties.

13. Amendment. This Contract may be modified or amended, only if the amendment is made in writing and is signed by both parties.

14. Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

15. No Waiver Of Contractual Right. No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and



executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16. Matters To Be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.

17. Subject To Funding. This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then this Contract will be terminated. In the event of such termination, the consultant shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

18. Travel Expenses. All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

19. Incorporation Of Other Documents. (a) Provider shall provide services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for the Shelby County Purchasing Department and incorporated herein by reference.

(b) It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

20. Contracting With Locally Owned Small Businesses. The Provider shall take affirmative action to utilized Locally Owned Small Businesses when possible as sources of supplies, equipment, construction and services.

21. Incorporation Of Whereas Clauses. The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

22. Waiver Of Proprietary Interest. Notwithstanding anything to the contrary contained herein or within any other document supplied to County by the Provider, Provider understands and acknowledges that County is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to County by Consultant due to services performed



pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

23. Organization Status And Authority. (a) Provider represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

(b) The execution, delivery and performance of this Contract by the Provider has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Provider, any provision of any indenture, agreement or other instrument to which the Provider is a party, or by which the Provider's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

24. Warranty. Provider warrants to County that all Services shall be in strict compliance with the terms of this Contract, and all applicable governmental laws, rules and regulations.

25. Rights in Data. The County shall become the owner, and the Provider shall be required to grant to the County, or its successors, a perpetual, non-exclusive, non-transferable, royalty-free right, in the County's name, to use any deliverables provided by the Provider under this Contract, regardless of whether they are proprietary to the Provider or to any third parties.

#### **A. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

1. Responsibilities For Claims And Liabilities. (a) Provider shall indemnify, defend, save and hold harmless the County, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the duties hereunder, whether performed by the Provider its sub-providers, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

(b) Provider expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Consultant shall in no way limit the responsibility to

indemnify, defend, save and hold harmless the County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

(c) The County has no obligation to provide legal counsel or defense to the Provider or its sub-providers in the event that a suit, claim or action of any character is brought by any person not party to this Contract against Provider as a result of or relating to obligations under this Contract.

(d) Except as expressly provided herein, the County has no obligation for the payment of any judgment or the settlement of any claims against the Provider as a result of or relating to obligations under this Contract.

(e) Provider shall immediately notify the County, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of any claim or suit made or filed against the Provider or its sub-providers regarding any matter resulting from or relating to Consultant's obligations under this Contract and will cooperate, assist and consult with the County in the defense or investigation thereof.

2. Insurance Requirements. Provider will provide evidence of the following insurance coverage:

**PROFESSIONAL SERVICES/CONSULTANT PROJECTS LESS THAN \$1,000,000**

***Minimum Limits of Insurance***

Contractor/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate; \$1,000,000 Fire Damage any one fire Shelby County Government shall be named as additional insured. The insurance shall include coverage for the following:
  - a) Premises/Operations
  - b) Explosion, Collapse, & Underground
  - c) Products/Completed Operations
  - d) Contractual
  - e) Independent Contractors
  - f) Broad Form Property Damage
  - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Shelby County Government shall be named as additional insured. Coverage is to be provided on all:
  - a) Owned/Leased Autos
  - b) Non-owned Autos
  - c) Hired Autos



- a. *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000 per accident.
- b. Umbrella or excess Liability in a minimum limit of \$2,000,000.
- c. Employee Dishonesty – minimum of \$25,000 per claim
- d. All Risk or equivalent coverage on Contractor's Business Personal Property, inventory and equipment and any improvements or betterments to facility as needed for the execution of the services.

Shelby County shall be named as additional insured on Commercial General Liability and Business Automobile Liability Insurance coverage. All policies will provide for 30 days written notice to Shelby County of cancellation or material change in coverage provided.

#### **B. Right to Monitor and Audit**

Access To Records. During all phases of the work and services to be provided hereunder the Provider agrees to permit duly authorized agents and employees of the County, to enter Provider's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The Provider will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Contract and make such materials available at their offices at all reasonable times during the period of this Contract and for three (3) years from the date of payment under this Contract for inspection by the County or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof; copies of said records to be furnished if requested.

### **XI. PROPOSAL SUBMISSION**

#### **A. GENERAL**

1. All interested and qualified Proposers are invited to submit a proposal for consideration. Submission of a proposal indicates that the Proposer has read and understands this entire RFP, including all attachments, exhibits, schedules, and addenda (as applicable) and all concerns regarding this RFP have been satisfied.
2. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc. are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

3. Proposals must be complete in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.
4. **Hard copy proposals must be received by no later than 3:00 p.m. (CST) on March 24, 2008, at Shelby County Government Purchasing Department, 160 N. Main St., Suite 550, Memphis, TN 38103.**
5. Proposer agrees to provide County with any additional information it deems necessary to accurately determine ability to perform the services proposed. Furthermore, submission of this proposal constitutes permission by this organization for the County to verify all information contained in the proposal. Failure to comply with any request for additional information may disqualify this organization from further consideration. Such additional information may include evidence of financial ability to perform.

#### B. PROPOSAL PRESENTATION

1. One (1) original copy (clearly identified as original) and five (5) copies of the proposal are required.
2. The package containing the original must be sealed and marked with the Proposer's name and **"JAIL FOOD SERVICES" RFP #08-003-57" with due date and time indicated.**
3. Proposals must be in ink. Erasures and "white-out" are not permitted. Mistakes may be crossed out, corrections typed adjacent and initialed in ink by the person signing the proposal. Please identify all attachments, literature and samples, etc., with your firm name and our bid number.
4. Proposals must be verified before submission as they cannot be withdrawn or corrected after being opened. The County will not be responsible for errors or omissions on the part of bidders in making up their proposals. A responsible officer or employee must sign proposals. Tennessee sales tax shall not be included in the Consultant's proposal.

#### C. PROPOSAL FORMAT

Response to this RFP must be in the form of a proposal package that must be submitted in the following format. **Please download the attachment to this document.** The Proposal Response Sheet and Utilization Report (*required documents*) should be the first two pages of your written response.



1. Cover Page/Proposal Response Sheet – Submit on letterhead stationary, signed by a duly authorized officer, employee, or agent of the organization/firm
2. Utilization Report ( **Separate Attachment Form**)
3. Comprehensive Response
  - a. Outline of how respondent can meet or exceed the minimum requirements
  - b. Detail of how the respondent is qualified to provide the services required
  - c. A detailed description of the approach/methodology including data collection and analysis
4. Cost and Fees
  - a. Provide the applicable itemized fees and any commissions included in the proposal for the Services for each element in the scope of work (this includes a break-down of the cost proposed for any sub-consultant working in conjunction with your organization on the project).
  - b. Explain any assumptions or constraints in a price proposal to perform the services.
  - c. Explain any additional charges or fees in the proposal.
5. Experience of the Respondent.

A sufficient description of the experience and knowledge base of the Proposer to show the Proposer's capabilities should be included in the Proposal. At a minimum, the description of the experience and knowledge base of the Proposer included in the Proposal should include, but not necessarily be limited to, the following:

- a. A brief description of the history and mission of the Proposer, including the Respondent's background and mission statement, the length of time the Proposer has been in business, a description of the Proposer's organizational structure and a description of the Proposer's customer make-up;
- b. A statement of how long the Proposer has provided services similar to the Services requested herein;

- c. A general description of the Proposer's experience and background in providing services similar to the Services requested herein;
- d. Any other relevant information about the experience and knowledge base of the Proposer which is deemed to be material.
- e. Resume of each employee engaged in the services, including the role of each and an overview of their previous experience with similar projects.

#### 6. References

References of the Proposer, including at least three (3) other clients for whom the Proposer has provided services similar to the Services (with preference given to clients comparable to Shelby County Government) and, for each such reference, the business name, the identification of a contact person, the title of the contact person and a telephone number;

#### 7. Additional Information

- a. A description of any other resources available to the Proposer that will be useful in providing the Services;
- b. A description of the methods used by the Proposer to measure the satisfaction of its client.
- c. Any other relevant information about the capabilities of the Proposer deemed to be material.

## **XII. PROPOSAL EVALUATION AND SELECTION**

### **A. EVALUATION PROCESS**

- 1. Initial Review – All proposals will be initially evaluated to determine if they meet the following minimum requirements:
  - a. The proposal must be complete, in the required format, and be in compliance with all the requirements of the RFP.
  - b. Proposers must meet the Minimum Proposer Requirements outlined in Section II of this RFP.



2. Technical Review- Proposals meeting the above requirements will be evaluated on the basis of the following criteria:

a. Each proposal will be reviewed by a special Ad-Hoc Committee which may elect to schedule a personal presentation and interview with one or more of the bidders. After the review process is completed, this committee will recommend the successful bidder to the Division Director, Finance and Administration, who makes the decision, subject to the approval of the contract by the Mayor and the Board of County Commissioners.

b. All proposals submitted in response to this RFP will be evaluated based on the following criteria:

- i. Qualifications of personnel.
- ii. Ability to present a clear understanding of the nature and scope of the project.
- iii. Project methodology.
- iv. Previous experience with similar projects.
- v. Cost to the Shelby County Government as outlined in the budget estimate.
- vi. Time frame for completion.

3. Oral Presentation.

The Shelby County Government reserves the right to interview, or require an oral presentation from, any Respondent for clarification of information set forth in the Proposer's response. In this regard, at the discretion of the evaluation committee, some or all Proposers who submit an Proposal in response to this RFP may be asked submit to an interview or give an oral presentation of their respective Proposals to the evaluation committee. If so, this is not to be a presentation restating the Proposal, but rather an in-depth analysis of certain qualifications of the Proposer. The interview or oral presentation, if utilized, is intended to provide an opportunity for the Proposer to clarify or elaborate on its qualifications without restating the Proposal. The interview or oral presentation is to be a fact finding and explanation session only and is not to be used to negotiate any terms of contract. If required, the time and location of such interview or oral presentation will be scheduled by the Administrator of Purchasing. Interviews and oral presentations are strictly an option of the Shelby County Government or its evaluation committee and, consequently, may or may not be conducted. All travel expenses to and from the interview or oral presentation shall be the responsibility of the Proposer.

Selection will be based on determination of which proposal best meets the needs of the County and the requirements of this RFP.

*Shelby County Government reserves the right to consider the vendor's EOC rating in all evaluations.*

B. CONTRACT AWARD

Contract(s) will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful Proposer will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award. The County reserves the right to negotiate any portions of the successful Proposer's fees and scope of work or utilize their own resources for such work.

